



COUNTY OF LOS ANGELES DEPARTMENT OF CONSUMER AFFAIRS

"To Enrich Lives Through Effective and Caring Service"

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December 12, 2005

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Los Angeles County Code - Revisions to Title 16, Division 4

Dear «Title» «LastName»:

The enclosed document is a draft revision of Los Angeles County Code, Title 16, Division 4 ("Division"), now entitled "Cable Communications System Franchises". A significant amount of thought and work from several individuals has gone into the production of this document. Nonetheless, please recognize that this is draft and not a final document. An electronic copy of this document can be found at the County web address <http://search2.co.la.ca.us/omd/> by searching "Title 16, Division 4".

The existing version of this Division was last amended in 1988. As you know, a lot has changed in the cable industry in the 17 years since the last revision. Our intent in revising the code is to create a framework of regulations that more accurately reflects the needs of the County, its residents, and cable service providers both now and in the foreseeable future.

Although changes have been made throughout this Division, notable changes have been made in the franchise application, transfer, grant and forfeiture processes; audit related issues, fees and penalties.

At this time, we are providing you with an opportunity to offer suggestions or feedback regarding the content of any of the language contained in this document. Comments and suggestions are encouraged. All comments and suggestions will be considered. However, there is no guarantee that any submissions will be incorporated into the final document. The final version of this document will be submitted to the County Board of Supervisors for their consideration and approval.

We are requesting that all comments and suggestions be submitted in writing no later than **Wednesday, January 18, 2006**.

Submissions should be sent to: County of Los Angeles
Department of Consumer Affairs
Cable TV Franchising
500 W. Temple Street, Room B96
Los Angeles, CA 90012-2706

Sincerely,

Fern Taylor
Chief, Telecommunications Franchising

LOS ANGELES COUNTY CODE

TITLE 16. DIVISION 4. CABLE COMMUNICATIONS SYSTEM FRANCHISES

Chapter 16.58 DEFINITIONS

Chapter 16.58	DEFINITIONS.....	1
16.58.010	Definitions generally -- Interpretation of language.	3
16.58.020	Access Channel.....	3
16.58.030	Access, PEG access, or PEG use.	3
16.58.040	Advertising receipts.	3
16.58.050	Affiliate.....	4
16.58.060	Applicable law.	4
16.58.070	Basic service tier.....	4
16.58.080	Reserved.....	4
16.58.090	Board.....	4
16.58.100	Cable Act.	4
16.58.110	Cable service.....	5
16.58.120	Cable Communications System.	5
16.58.130	Cable System.	5
16.58.140	Channel.....	5
16.58.150	Commission.	6
16.58.160	Construct, operate and repair.	6
16.58.170	Converter.....	6
16.58.180	County.....	6
16.58.190	Department.....	6
16.58.200	Director.	6
16.58.210	Drop.....	7
16.58.220	Educational Access Channel or Educational Channel.	7
16.58.230	Expanded basic service tier.....	7
16.58.240	FCC.....	7
16.58.250	Reserved.....	7
16.58.260	Franchise.	7
16.58.270	Franchisee.	8

16.58.280	Reserved.....	8
16.58.290	Government Access or Government use.....	8
16.58.300	Gross revenues.....	8
16.58.310	Headend.....	9
16.58.320	Highway.....	9
16.58.330	Installation.....	9
16.58.340	Institutional Network.....	10
16.58.350	Lease receipts.....	10
16.58.360	Leased channel.....	10
16.58.370	Normal Operating Conditions.....	10
16.58.380	Reserved.....	11
16.58.390	Reserved.....	11
16.58.400	Ordinance No. 3597.....	11
16.58.410	Open Video System or OVS.....	11
16.58.420	PEG user.....	11
16.58.430	Person.....	11
16.58.440	Public easement.....	12
16.58.450	Public entity.....	12
16.58.460	Reimbursable Work.....	12
16.58.470	Road commissioner.....	12
16.58.480	Section.....	12
16.58.490	Service area.....	12
16.58.500	Service interruption.....	13
16.58.510	Standard drop.....	13
16.58.520	State-of-the-art.....	13
16.58.540	Tier(s) or tier(s) of service.....	13

16.58.010 Definitions generally -- Interpretation of language.

For the purpose of this Division 4, the following terms, phrases, words and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this Division 4 shall be given the meaning set forth in Title 47 of the United States Code, as amended, and if not defined in Title 47, words shall have their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and “including” and “include” are not limiting. The word “shall” is always mandatory and not merely directory.

16.58.020 Access Channel.

“Access Channel” means any channel on a cable communications system set aside by a franchisee for public, educational, or governmental use.

16.58.030 Access, PEG access, or PEG use.

“Access,” “PEG access,” or “PEG use,” means the availability of a cable communications system for public, educational or governmental use (including institutional network use) by various agencies, institutions, organizations, groups, and individuals, including the county and its designated access providers, to acquire, create, and distribute programming not under a franchisee’s editorial control, including, but not limited to the access or use described in Sections ____ below.

16.58.040 Advertising receipts.

“Advertising receipts” means any and all income, compensation, fees, and other consideration received directly or indirectly by a franchisee or an affiliate, derived from any form of advertising, relating directly or indirectly to franchisee’s franchise activities and operations.

16.58.050 Affiliate.

“Affiliate” means any person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

16.58.060 Applicable law.

Applicable law means federal, state and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to applicable laws include laws now in effect, as the same may be amended from time to time.

16.58.070 Basic service tier.

“Basic service tier” or “Basic service” means that tier that, at a minimum, includes all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals or service added to the basic tier by the cable operator.

16.58.080 Reserved.

16.58.090 Board.

“Board” means the board of supervisors of the county of Los Angeles.

16.58.100 Cable Act.

“Cable Act” means the Federal Cable Communications Policy Act of 1984, 47 U.S.C. § 521 *et seq.*, as amended from time to time.

16.58.110 Cable service.

“Cable service” means the one-way transmission to subscribers and institutional users of video programming and other programming services, and subscriber interaction, if any, that is required for the selection or use of such video programming or other programming service.

16.58.120 Cable Communications System.

Cable communications system means an open video system or a cable system.

16.58.130 Cable System.

A. “Cable system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and is provided to multiple subscribers within the county, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public rights-of-way and without connecting to a facility that uses any public rights-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

16.58.140 Channel

“Channel” means a six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals or some combination of such signals.

16.58.150 Commission.

“Commission” means the business license commission as provided for in that portion of the Administrative Code of the county set out at Chapter 2.54 of Title 2 of this code.

16.58.160 Construct, operate and repair.

“Construct, operate and repair” and similar formulations of that term, means erect, install, construct, maintain, operate, repair, reconstruct and remove lines and cables, together with all appurtenances and service connections necessary to provide Cable Services, those actions interpreted broadly to encompass, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, and the management of the cable system and its operations.

16.58.170 Converter.

“Converter” means an electronic device which may serve as an interface between a system and a subscriber’s television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

16.58.180 County.

“County” means the county of Los Angeles, state of California.

16.58.190 Department.

“Department” means the department of consumer affair, county of Los Angeles, or its successor.

16.58.200 Director.

“Director” means director, department of consumer affairs, county of Los Angeles, or his or her authorized representative.

16.58.210 Drop

“Drop” means a connection extending from the potential Subscriber’s demarcation point to the nearest point on the Cable System from which Franchisee can provide Cable Service to that Subscriber.

16.58.220 Educational Access Channel or Educational Channel.

“Educational Access Channel” or “Educational Channel” means any channel on a cable communications system set aside by a franchisee for educational use.

16.58.230 Expanded basic service tier.

“Expanded basic service tier” or “Expanded basic service” means that video programming tier that includes the basic service tier and the next most widely subscribed tier that includes the satellite programming channels.

16.58.240 FCC.

“FCC” means the Federal Communications Commission, its designee or its successor.

16.58.250 Reserved.

16.58.260 Franchise.

“Franchise” means an authorization granted by the county to the operator of a cable communications system pursuant to this Division 4, giving the operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights-of-way in the unincorporated areas of the county, to provide specified services within a franchise area. A permit is not a franchise. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the county as required by the ordinances and laws of the county, or for attaching

devices to poles or other structures, whether owned by the county or a private entity, or for excavating or performing other work in or along public rights-of-way.

16.58.270 Franchisee.

“Franchisee” means a person that has been granted a cable communications system franchise by the county.

16.58.280 Reserved.

16.58.290 Government Access or Government use.

“Government Access” or “Government use” means access where government institutions or their designees are the designated programmers or users having editorial control over their communications on a governmental channel.

16.58.300 Gross revenues.

“Gross revenues” means any and all revenue, of any kind, nature or form derived from the operation of a cable communications system to provide OVS or cable service. Any and all cash, credits, property or other consideration of any kind or nature derived from the operation of the franchisee’s cable communications system to provide cable services by the franchisee, its affiliates, or any other entity that is a cable operator of the system. This definition shall be construed so as to include all gross revenues to the maximum extent permitted by federal law, and encompasses revenues that may develop in the future, whether or not anticipated.

Gross revenues include, by way of illustration and not limitation, fees for any cable service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the system; revenues from rentals or sales of converters or other equipment; studio rental, production equipment, and personnel fees;

advertising revenues; barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.

Gross revenues shall not include any taxes on services furnished by the Franchisee which are imposed directly on any subscriber or user by the state, county, or other governmental unit and which are collected by the Franchisee on behalf of such governmental unit. A franchise fee is not such a tax, and franchise fee expenses may not be deducted in determining the amount of the fee due to the county.

16.58.310 Headend.

“Headend” means the electronic processing and distribution center for signals received from the Cable Communication System.

16.58.320 Highway.

“Highway” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, parkstrip, drive, or right-of-way, including all or any part of the entire width of the right-of-way, whether such area is actually used for highway purposes, set aside by easement or in fee, either by agreement or condemnation, now or hereafter existing within the unincorporated areas of the county which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

16.58.330 Installation.

“Installation” means the connection of system services to a subscriber’s television receivers or other subscriber-owned or provided terminal equipment.

16.58.340 Institutional Network

“Institutional Network” means a communication network which is constructed or operated by a cable communications system operator and which is generally available only to subscribers who are not residential subscribers.

16.58.350 Lease receipts.

“Lease receipts” means any and all income, compensation, fees and other consideration received directly or indirectly by franchisee for the lease or rental of franchise property, and compensation for any service in connection therewith including but not limited to studio and equipment rental and production costs of any channel permitted or designated by the FCC to be so leased or rented.

16.58.360 Leased channel.

“Leased channel” means a channel on the cable system on which the franchisee shall provide open, widespread, and reasonable access to persons who desire to use such channel for commercial purposes, as defined in 47 U.S.C. § 532.

16.58.370 Normal Operating Conditions.

“Normal Operating Conditions” means those service conditions that are within the control of a franchisee. Conditions that are not within the control of a franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, and telephone network outages. Conditions that are within the control of a franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a cable communications system.

16.58.380 Reserved.

16.58.390 Reserved.

16.58.400 Ordinance No. 3597.

“Ordinance No. 3597” means county of Los Angeles Ordinance No. 3597, entitled “highway permit ordinance” adopted May 28, 1940, and as subsequently amended, and as set forth in Division 1 of this Title 16; or the provisions of whatever superseding or supplementary ordinance which is in force at that time.

16.58.410 Open Video System or OVS.

“Open Video System” or “OVS” means a cable communications system certified by the FCC, including pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.

16.58.420 PEG user.

“PEG user” means a party utilizing a PEG channel or facilities for purposes of production or transmission of material to subscribers.

16.58.430 Person.

“Person” means any individual, firm, partnership, association, corporation, joint venture, company or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the county.

16.58.440 Public easement.

“Public easement” includes, but is not limited to, any easement created by dedication to the public, the county, or any public entity, for public utility purposes or any other purpose whatsoever.

16.58.450 Public entity.

“Public entity” means any district or other political subdivision of which the board is ex officio the governing body, or the members of the board are ex officio members of the governing body.

16.58.460 Reimbursable Work.

“Reimbursable Work” means any work done by the County or its designee resulting from the franchisee abandoning any of its facilities in the County public rights-of-way or failing to complete restoration work in the public-right-of-way or on public property as directed by the County.

16.58.470 Road commissioner.

“Road commissioner” means the road commissioner of the county of Los Angeles

16.58.480 Section.

“Section” means a section of the ordinance codified in this Division 4 of Title 16, unless some other ordinance or statute is mentioned.

16.58.490 Service area.

“Service area” means that area of the county in which the franchisee is authorized to construct and operate, and provide service connections for, a cable communications system pursuant to the terms and conditions of the franchise.

16.58.500 Service interruption.

“Service Interruption” means the loss of picture or sound on one or more channels, or degradation of picture or sound beyond permissible levels as defined by applicable law.

16.58.510 Standard drop.

“Standard drop” means a drop of two hundred (200) feet or less.

16.58.520 State-of-the-art.

“State-of-the-art” means that level of technical performance or capacity, service, plant or other equipment, production or other facilities, or construction techniques for which there is a reasonable market demand and which has been developed and demonstrated to be workable and such that it would be economically feasible and viable in the service area during the term of the franchise.

16.58.530 Subscriber.

“Subscriber” means any person, including the county, who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system, whether or not a fee is paid for such service.

16.58.540 Tier(s) or tier(s) of service.

“Tier(s) or tier(s) of service” means a grouping or groupings of program services on the cable communications system which is marketed to subscribers for a single monthly or other charge.

Chapter 16.60 GENERAL REQUIREMENTS

Chapter 16.60	GENERAL REQUIREMENTS	14
16.60.010	Title for citation.	16
16.60.020	Purpose of Division 4 provisions.....	16
16.60.030	Continuation of provisions.....	16
16.60.035	Transitional provisions.....	16
16.60.040	Provisions incorporated by reference.....	17
16.60.060	Statutory provisions applicable.....	17
16.60.080	Rights reserved to the county.....	17
16.60.090	Terms and conditions generally.....	18
16.60.100	Franchise grant not exclusive.....	19
16.60.110	Nothing Passes by Implication.....	19
16.60.120	Compliance with Division 4 provisions.....	19
16.60.130	Police Powers.....	19
16.60.140	Franchise Not a Permit.....	20
16.60.150	Limitations on Grant of Access to Rights-of-Way	20
16.60.160	Private Property	20
16.60.170	Right and Obligation.....	21
16.60.180	Costs Borne by Franchisee.....	21
16.60.190	Acceptance of franchise.....	21
16.60.200	Acknowledgment of right to franchise.	22
16.60.210	Indemnification requirements.	22
16.60.220	General insurance requirements.....	22
16.60.230	Insurance Coverage Requirements:	24
16.60.240	Letter of credit requirements.....	26
16.60.250	Failure to procure or maintain required insurance and letter of credit.	28
16.60.260	Assignment of, certificates of deposit, cash deposits, or U.S. government securities in lieu of letter of credit.	28
16.60.270	Reserved.....	29
16.60.280	Liquidated damages.	29
16.60.290	Penalties for Violation of Customer Service and Consumer Protection Standards.....	31
16.60.300	Grant and forfeiture conditions.....	32

16.60.310	Reserved.....	35
16.60.320	Sale, transfer, stock transfer, lease, assignment, hypothecation or change in control of franchise.	35
16.60.330	Reserved.....	40
16.60.340	Reports to director or department.	40
16.60.350	Reports to road commissioner.	42
16.60.360	Additional terms and conditions.	43
16.60.370	Permit required for certain work.....	43
16.60.380	Area under franchise -- Rights of franchise.....	43
16.60.390	Reserved.....	44
16.60.400	Fair employment practices -- Statutory provisions incorporated by reference.....	44
16.60.410	Access to trenches.....	44
16.60.420	Nonenforcement not a waiver.....	45
16.60.430	Severability.	45

16.60.010 Title for citation.

The ordinance codified in Division 4 of this Title 16 shall be known and may be cited as the “Cable Communications System Ordinance.”

16.60.020 Purpose of Division 4 provisions.

It is the purpose of the ordinance codified in this Division 4 to standardize County practices and expectations for the cable television industry, to provide for the unified administration of cable communications system franchises, to regulate rates to the extent allowable by federal, state and local laws when necessary for the public good, and to regulate the operation of franchises for the purpose of protecting and promoting the public health, safety and welfare in the interests of the subscriber, franchisee, and the public.

It is further the intent of this ordinance to provide a regulatory framework that will result in franchisees’ provision of quality service that is both beneficial and responsive to the county’s unincorporated communities.

16.60.030 Continuation of provisions.

The provisions of this Division 4, insofar as they are substantially the same as existing ordinance provisions relating to the same subject matter, shall be construed as restatements and continuations of the existing ordinance, and not as new enactments.

16.60.035 Transitional provisions.

Any person holding an existing County franchise for a cable communications system may continue to operate under the existing franchise to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such person shall be subject to the provisions of this Division 4 to the extent permitted by applicable law.

16.60.040 Provisions incorporated by reference.

In addition to the terms and conditions set out in this Division 4, the franchise is granted under the same terms and conditions contained in Sections 16.38.040, 16.38.120, 16.38.130, 16.38.160, 16.38.250 through 16.38.280, 16.38.300, 16.38.310, 16.38.330, 16.38.340, 16.38.380 through 16.38.400, 16.38.430, 16.38.450 and 16.38.460 and Chapter 16.40 of Division 3 of this title as if they were contained in this Division 4 of Title 16. In the event the terms and conditions of this Division 4 conflict with the terms and conditions of Ordinance 7468, as set forth in Division 3 of this title, the terms and conditions of this Division 4 shall control.

16.60.060 Statutory provisions applicable.

All franchises for a cable communications system shall be granted pursuant to applicable law.

16.60.080 Rights reserved to the county.

A. The rights reserved to the county under this Division 4 are in addition to all other rights of the county, whether reserved by this Division 4 or authorized by applicable law, the Los Angeles county code, the Charter of Los Angeles County, or any other applicable federal, state, or county law, ordinance, rule or regulation. No action, proceeding, or exercise of a right by the county or a franchisee shall affect any other rights which may be held by the county or a franchisee. A franchisee, by acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirement of the county in its exercise of any such right or power.

B. The county shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the director determines:

1. That it is in the public interest to do so; or
2. That the enforcement of such provision will impose an undue hardship on the franchisee or the subscribers.

C. In the event a franchisee is required to perform a particular obligation under the terms of a franchise granting ordinance only if such performance is technologically or economically feasible it shall be the franchisee's burden to demonstrate to the county's satisfaction the lack of such feasibility in order to be relieved of the obligation.

D. The county shall have the power and right at all times for the duration of the franchise to require a franchisee to conform to rules and regulations governing the operation of cable television systems now or hereafter adopted by the board.

E. The failure of County upon one (1) or more occasions to exercise a right or to require compliance or performance under a franchise, this ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right, compliance or performance has been specifically waived by the County in writing.

16.60.090 Terms and conditions generally.

Every franchise granted by the county on or after _____, 2005 shall authorize and permit a franchisee to construct, operate and repair a cable system, or an open video system (as applicable) pursuant to the terms of its franchise and this Division 4, to provide cable service within a service area in the unincorporated territory of the county of Los Angeles, and for that purpose, to erect, install, construct, maintain, operate, repair, reconstruct and remove lines and cables, together with all appurtenances and service connections necessary to such system, in, on, under, over, upon, along or across those service areas, highways, public rights of way, and public easements that the county may authorize a franchisee to use in the unincorporated territory of the county of Los Angeles. Chapters 16.38 and 16.40 of Division 3 of this title, and Chapter 1.25 of Title I are incorporated by reference in this Division 4. Every Franchisee shall comply with the rules, regulations, restrictions, terms and conditions set forth in the franchise granting ordinance,

this Division 4, all applicable provisions of the County Code including without limitation those sections expressly incorporated by reference in this Division 4, and all applicable state and federal law .

16.60.100 Franchise grant not exclusive.

A franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable communications systems within the county; affect the county's right to authorize use of public rights-of-way by other persons to operate cable communications systems or for other purposes as it determines appropriate; or affect the county's right to itself construct, operate, or maintain a cable communications system, with or without a franchise. All privileges prescribed by a franchise shall be subordinate to (without limitation) any prior lawful occupancy and the county's use of the public rights-of-way.

16.60.110 Nothing Passes by Implication

A franchise shall not convey rights other than as expressly specified in this Chapter, or in a franchise granting ordinance; no rights shall pass by implication.

16.60.120 Compliance with Division 4 provisions.

Nothing contained in this Division 4 shall ever be construed so as to exempt the franchisee from compliance with the Los Angeles county code, or any other applicable federal, state, or county law, ordinance, rule or regulation now in effect or which may be hereafter adopted which are not inconsistent with the terms of the franchise.

16.60.130 Police Powers

The rights granted under a franchise granting ordinance are subject to the exercise of police and other powers the county now has or may later obtain, including but not limited to the power of eminent domain.

16.60.140 Franchise Not a Permit

A franchise shall not include, or be a substitute for:

A. Any permit, agreement or authorization required in connection with construction, operation or repair on or in Public rights-of-way or Public Property, including by way of example and not limitation, street cut permits;

B Any permits or agreements for occupying any other property of county or private entities to which access is not specifically granted by the franchise.

16.60.150 Limitations on Grant of Access to Rights-of-Way

A. A franchise does not convey title, equitable or legal, in the Public rights-of-way or Public Property. Any right granted to a franchisee by a franchise granting ordinance shall not be subdivided or subleased to any other person or affiliate.

B. The county reserves the right to reasonably designate where a franchisee's facilities are to be placed within the highways to resolve any disputes among users of the highways. No reference in this Division 4, or in any franchise agreement, to "public rights-of-way" shall be deemed to be a representation or guarantee by the county that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in the county and as the county may have the undisputed right and power to give.

16.60.160 Private Property

A franchise does not expressly or implicitly authorize a franchisee to provide service to, or install a cable communications system on, private property without owner consent (except for use of compatible easements pursuant to 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

16.60.170 Right and Obligation

A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this Division 4 and the franchise granting ordinance.

16.60.180 Costs Borne by Franchisee

Unless otherwise specifically stated in a franchise granting ordinance or required by law, all of a franchisee's obligations under this Division 4, a franchise granting ordinance or applicable law must be performed by the franchisee at its expense and at no cost to the County.

16.60.190 Acceptance of franchise.

A. No franchise granted pursuant to this Division 4 shall become effective unless and until Franchisee has, within thirty (30) days after the passage of the franchise granting ordinance, filed with the executive officer-clerk of the board, an express and unconditional written acceptance of the terms and conditions of such franchise granting ordinance; provided, however, that as to franchises granted to the United States of America, use will constitute acceptance.

B. The parent entity, if any, of the franchisee, shall file a letter with the county, concurrent with the franchisee's letter of acceptance, which guarantees the performance of each and every term, covenant and condition imposed on the franchisee pursuant to the franchise.

C. The franchisee's letter of acceptance shall be signed by a duly authorized representative(s) of the franchisee, whose signature(s) shall be acknowledged by a notary, and shall be accompanied by the letter of credit, evidence of insurance, and any other information or documentation required by this Division and/or the franchise granting ordinance.

D. If the franchisee fails to satisfy these obligations within thirty (30) days of final passage of the franchise granting ordinance, the franchisee shall have no right to add additional subscribers or extend the system as it existed on the day the board approved the franchise granting ordinance until such time as all the franchisee's obligations under this section are met.

Further, the county may in its discretion repeal the franchise granting ordinance, terminating the franchise.

16.60.200 Acknowledgment of right to franchise.

The franchisee, by acceptance of the original franchise granted pursuant to the ordinance, expressly acknowledges and accepts the right of the county to issue a franchise. Franchisee further acknowledges and accepts the right of the county to exercise directly or delegate its regulatory power to a subordinate body or its officers, employees, agencies, committees, or departments to ensure the proper implementation of the franchise.

16.60.210 Indemnification requirements.

A. The franchisee shall indemnify, defend and hold harmless the county, and its Special Districts, elected and appointed officers, employees and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees) arising from or connected with franchisee's acts and/or omissions, or arising from or connected to services performed on behalf of the franchisee by any person pursuant to this franchise.

B. Nothing in this section 16.68.130 shall be deemed to prevent the parties indemnified and held harmless from participating in the defense of any litigation by their own counsel at the franchisee's sole expense. Such participation shall not under any circumstances relieve the franchisee from its duty of defense against liability or of paying any judgment entered against such party.

16.60.220 General insurance requirements

A. Without limiting the franchisee's indemnification of the county and during the term of this Agreement, each franchisee shall provide and maintain the programs of insurance

required by the county. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the county.

B. Certificate(s) or other evidence of coverage satisfactory to the county shall be delivered to the director prior to commencement of the franchise. Such certificates or other evidence shall:

1. Specifically identify the franchise granting ordinance the insurance pertains to;

2. Clearly evidence all coverage required under this Division 4;

3. Contain the express condition that the county is to be given written notice by mail at least sixty (60) days in advance of cancellation for all policies evidenced on the certificate of insurance;

4. Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from a franchise granting ordinance and this Division 4;

5. Identify any deductibles or self-insured retentions for the county's approval. The county retains the right to require a franchisee to reduce or eliminate such deductibles or self-insured retentions as they apply to the county, or, to require a franchisee to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

6. The county reserves the right to require copies of the franchisee's insurance policies at the county's request.

C. Insurance is to be provided by an insurance company acceptable to the county with an A.M. Best rating of not less than A:VII, unless otherwise approved by the county.

D. Failure by a franchisee to maintain the required insurance or to provide evidence of insurance coverage acceptable to the county shall constitute a material breach upon which the county may immediately terminate or suspend the franchise. The county, at its sole option, may, elect to impose liquidated damages for such breach pursuant to Section 16.60.157.

E. The types and amounts of insurance coverage and bonding shall be subject to review and adjustment by the county, at the county's sole discretion, at any time during the term of the franchise. In event of such adjustment, the franchisee shall obtain the adjusted insurance coverage and bonding, in the types and amounts as determined by the county, within thirty (30) days after written notice from the county.

16.60.230 Insurance Coverage Requirements:

A. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$4 million
Products/Completed Operations Aggregate:	\$2 million
Personal and Advertising Injury:	\$2 million
Each Occurrence:	\$2 million

B. Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

C. Workers' Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California or by any other

state, and for which the franchisee is responsible. If the franchisee's employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the franchisee is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

D. As an alternative to the maintenance of commercial insurance by the franchisee, the county may consider a program of self-insurance or self-insured retention, at the county's sole option, upon review and approval of the following:

1. An agreement to provide the county and the county's agents with indemnification in accordance with the requirements of this Division 4. The county shall be provided at least the same defense of suits and payments of claims as would be provided by the first dollar of commercial insurance.

2. A formal declaration to be self-insured for the type and amount of coverage indicated in this ordinance. This can be in the form of a corporate resolution or a certified statement from an authorized principal of the franchisee. The franchisee must notify the county immediately of discontinuation or substantial change in the self-insurance or self-insured retention program.

3. An agreement to notify the county immediately of any claim, judgment, settlement, award, verdict, or change in the franchisee's financial condition which would have a significant negative effect on the protection that the self-insurance or self-insured retention program provides to the County.

4. The name, address, and telephone number of the franchisee's legal counsel and claim representative, respectively, for the self-insurance or self-insured retention program.

5. Upon request by the county, an audited financial statement that gives evidence of the franchisee's capacity to respond to claims falling within the self-insurance or self-retention program. Resubmission of such a statement may be required annually for the duration of the franchise, or more frequently at the request of the county.

(a) A Certificate of Consent to Self-Insure issued by the State of California, Department of Industrial Relations certifying Franchisee's compliance with the requirements of the Director of Industrial Relations under the provisions of the Labor Code of the State of California (sections 3700 to 3705, inclusive) and certifying that the franchisee has furnished satisfactory proof to the Director of Industrial Relations of the franchisee's ability to self-insure and to pay any compensation that may become due to the franchisee's employees.

6. Failure on the part of the franchisee to comply with the county's requirements for approval of a program of self-insurance or self-insured retention will result in withdrawal of the county's approval to self-insure.

D. No franchise operations shall commence until the franchisee has complied with aforementioned provisions of this section 16.60.130, and any such operations shall be suspended during any period that franchisee fails to maintain such policies in full force and effect.

E. It shall be the franchisee's obligation to provide evidence of current insurance policies prior to the effective date of a franchise granting ordinance or the effective date of any approval of a transfer request, and upon any changes in coverage.

16.60.240 Letter of credit requirements.

A. On or before the effective date of the franchise granting ordinance, a franchisee shall furnish the director with an irrevocable letter of credit from a financial institution licensed

to do business in California. The county shall approve the form and content of the letter of credit.

B. The franchisee and its surety shall be jointly and severally liable under the terms of the letter of credit.

C. The letter of credit shall provide for ninety (90) days' prior written notice to the county of any intention on the part of the franchisee to cancel, fail to renew, or otherwise materially alter the terms of the letter of credit.

E. The letter of credit shall be maintained in full force and effect at all times during the term of the franchise and shall be in favor of the county in an amount specified in the franchise granting ordinance but in no case less than fifty thousand dollars (\$50,000.00).

F. In the event the county withdraws any funds from any such instrument(s), franchisee shall replenish the amount withdrawn within ten (10) business days.

G. The letter of credit shall be conditioned upon faithful performance by franchisee of the terms and conditions of the franchise and shall provide that, in case of any breach of condition of the letter of credit, the entire face amount of the bond shall be deemed to be liquidated damages and shall be payable to the county by the principal and sureties of the letter or credit. If such letter of credit is not filed as required, the award of the franchise may be set aside and the franchise granting ordinance repealed, and any money paid in consideration for such award of franchise shall be deemed forfeited. The rights reserved with respect to such letter of credit are in addition to all other rights of the county.

H. The amounts of the letter of credit shall be subject to review and adjustment by the county, at county's sole discretion, at any time during the term of the franchise. In the event of such adjustment, franchisee agrees to renew the letter of credit, in an amount as determined by the county, with sureties to be approved by the county, within thirty (30) days after written notice to do so from the county.

I.. The letter of credit shall continue to exist for one (1) year following the Board's approval of any transfer of the franchise, as defined in section 16.60.170, or of the expiration or termination of the franchise, only for the purpose of assuring the franchisee's faithful performance under the terms and conditions of the franchise prior to the date of approval of such transfer or of expiration or termination. The director may release the letter of credit prior to the end of the one-year (1 year) period upon satisfaction by franchisee of all such obligations under the franchise.

J. No franchise operations shall commence until the franchisee has complied with the aforementioned provisions of this section.

K. It shall be the franchisee's obligation to provide evidence of a current letter of credit in the required amount.

16.60.250 Failure to procure or maintain required insurance and letter of credit.

Failure on the part of the franchisee to procure or maintain insurance and/or letter of credit as required under the franchise and this Division 4 shall constitute a material breach of the franchise upon which the county may exercise any remedy it may have, including without limitation liquidated damages, shortening the term of the franchise, or revocation or suspension of the franchise.

16.60.260 Assignment of, certificates of deposit, cash deposits, or U.S. government securities in lieu of letter of credit.

At its sole discretion, the county may accept assignments of, certificates of deposit, cash deposits, or U.S. government securities in lieu of the required letter of credit. Such alternate security instruments shall be made payable to the county and shall be deposited with the county's auditor-controller in the same amount as required on the letter of credit. Assignment of savings and loan certificates shall be subject to all of the Administrative Code provisions set out at

Chapter 4.36 of this code. Earnings, if any, on the security provided shall accrue to the franchisee.

16.60.270 Reserved.

16.60.280 Liquidated damages.

A. By acceptance of a franchise granted by the county, the franchisee understands and agrees that failure to comply with any time or performance requirements as stipulated in this ordinance and the franchising granting ordinance will result in damages to the county, and that the amounts set forth herein are reasonable under the circumstances. Each of the amounts set forth below has been set in recognition of the difficulty in affixing actual damages arising from breach of the franchise agreement. A franchisee shall pay, in the following circumstances, liquidated damages to the county, in the following amounts, which the County may charge against the letter of credit or alternative security should franchisee not make payment within thirty (30) days of written notice by county that the following amounts are due for the following concerns:

1. Failure to complete system construction in accordance with franchise granting ordinance, unless the director approves the delay due to the occurrence of conditions beyond franchisee's control: a maximum of five hundred dollars (\$500.00) per day for each day, or part of a day, that the deficiency continues.

2. Failure to provide data, documents, or reports when specified in this division or in a franchise granting ordinance, or within the time specified in a written request by the county: one hundred fifty dollars (\$150.00) per day for each day, or part of a day, that each such violation continues.

3. Failure to test, analyze and report on the performance of the system following a written request by the county within such time as may be specified in such request:

two hundred dollars (\$200.00) per day for each day, or part of a day, that such noncompliance continues.

4. Failure to provide in a continuing manner the type of services proposed in the franchisee's application as incorporated into the franchise granting ordinance, unless the director approves a delay or change: five hundred dollars (\$500.00) per day for each day, or part of a day, that each instance of noncompliance continues.

5. Failure to construct the cable communications system in an area meeting the density requirements following a written request by the county, within such time as may be specified in such request: two hundred dollars (\$200.00) per day for each day, or part of a day, that each instance of noncompliance continues.

6. Failure to provide required notices to subscribers: one dollar (\$1.00) per subscriber per month for each month, or part of a month, that each instance of noncompliance continues.

7. Failure to provide current evidence of insurance or letter of credit: five hundred dollars (\$500.00) per month for each month, or part of a month, that each instance of noncompliance continues. Nothing in this section shall preclude immediate termination or suspension of franchise as provided for under Section 16.60.145 for franchisee's failure to procure or maintain the required insurance and bonding.

8. For all other material violations of the franchise for which actual damages may not be ascertainable: One Hundred Dollars (\$100) per day for each violation for each day the violation continues.

9. Nothing in this section shall preclude further liquidated damages as agreed upon by the parties in the franchise granting ordinance.

B. If the director determines that the franchisee is liable for liquidated damages, the director shall issue to franchisee by certified mail written notice of intention to assess liquidated

damages. Assessments shall begin to accrue as of the date of the written notice and as set forth in such notice, provided that if the violation as described in the notice is cured within the time period specified in the notice, such damages shall not be assessed.

C. The franchisee shall have the right to appeal any notice to the director, by certified mail, within fifteen (15) days of receipt of notice. The director shall hold an administrative hearing within sixty (60) days of receipt of an appeal, where the franchisee shall have the opportunity to be heard to demonstrate that damages should not be imposed because a violation has not occurred; or the violation was cured within the time specified in the notice; or that the violation could not practically be cured within the time specified but that the franchisee began diligently pursuing a correction to the problem within the time specified. The director's decision shall be final.

D. If the franchisee does not appeal the notice within fifteen (15) days or receipt of the notice, or cure the violation within the time period specified in the notice, the franchisee shall pay the amount(s) of liquidated damages as indicated in the notice. If payment is not made as provided for in this section, the county may draw against the letter of credit or security fund in the specified amounts.

16.60.290 Penalties for Violation of Customer Service and Consumer Protection Standards

A. Each franchisee must comply with all applicable state and federal customer service and consumer protection provisions, as well as all customer service and consumer protection standards set forth in this Division 4 and the standards provided in a franchise granting ordinance. For each violation of an applicable consumer protection or customer service standard, the county may impose penalties as follows:

1. Two hundred dollars (\$200.00) for each day of each material breach, not to exceed six hundred dollars (\$600.00) for each occurrence of the material breach).

2. If there is a subsequent material breach of the same provision within twelve (12) months, four hundred dollars (\$400.00) for each day of each material breach, not to exceed twelve hundred dollars (\$1200.00) for each occurrence of the material breach.

3. If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1000) for each day of each material breach, not to exceed three thousand dollars for each occurrence of the material breach.

B. For purposes of this Section 16.60.158, “material breach” shall mean any substantial and repeated failure to comply with applicable customer service and consumer protection standards.

C. Penalties assessed under this Section 16.60.158 shall be reduced dollar for dollar to the extent the county has assessed liquidated damages for the same customer service failures, and no further monetary damages may be assessed..

D. A citation may be served on the franchisee by providing a copy to the person to whom notices are to be sent under the franchise granting ordinance.

E. Penalties under this Division shall be imposed pursuant to the procedures set forth in Cal. Govt. Code § 53088, *et seq.*, as may be amended, and may be collected by the county from the letter of credit or the security fund.

16.60.300 Grant and forfeiture conditions.

A. The franchise is granted and shall be held upon each and every condition contained in the franchise granting ordinance and each and every condition contained in this Division 4, and shall ever be strictly construed against the franchisee.

B. In addition to all other rights and powers retained by the county under this Division or otherwise, the county reserves the right to suspend, shorten the term, or revoke and terminate a franchise and all rights and privileges of a franchisee in the event of a material

breach of its terms and conditions. In interpreting this section, material provisions shall include all labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of the franchise agreement. A material breach by franchisee shall include but shall not be limited to the following:

1. Violation of any material provision of the franchise or any material rule, order, regulation or determination of the county made pursuant to the franchise;
2. Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;
3. Failure to begin or complete system construction, reconstruction or system extensions as provided under the franchise;
4. Failure to provide the types of facilities, equipment or services promised;
5. Material misrepresentation of fact in the application for or negotiation of the franchise or a franchise transfer.
6. Transfer of a franchise, franchisee, cable communications system, or control over the same without prior approval of the board.
7. Providing cable service in an area outside the franchise service area without the county's authorization.

The foregoing shall not constitute a material breach if in the opinion of the board the violation occurs without fault of the franchisee or occurs as a result of circumstances beyond its control. Franchisee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers or employees.

C. The director, prior to any suspension or revocation and termination of the franchise, shall give to the franchisee written notice of the material breach. The franchisee shall have 30 days to either to take corrective action to the satisfaction of the director or demonstrate to the satisfaction of the director that no breach has occurred. If within thirty (30) days following

receipt of such written notice, the franchisee has not taken corrective action to the satisfaction of the county, the director may give written notice to the franchisee of its intent to suspend or revoke and terminate the franchise. No opportunity to cure shall be provided the franchisee if the franchisee is shown to have defrauded or attempted to defraud the county or its subscribers. The commission shall hold a public hearing regarding the suspension or revocation and termination of the franchise,, after providing the franchisee thirty (30) days written notice, where the franchisee and the public will be given an opportunity to be heard.

D. In any proceeding under Section 16.60.160(C), the franchisee shall be afforded adequate notice, and the franchisee and the county shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

E. Upon the conclusion of the hearing, the commission shall issue a recommendation to the director stating whether it concurs with the director's recommendation to suspend, revoke or terminate the franchise. In making its recommendation, the commission will consider whether the franchisee is in default and whether it was given reasonable opportunity to cure the default but has failed to do so. Following receipt of the commission's recommendation, the director will make a final recommendation to the board whether to suspend, revoke, or terminate the franchise and whether to impose additional terms and conditions upon the franchisee in order to reinstate the franchise. No revocation and termination shall become effective less than thirty (30) days after the board's declaration to revoke and terminate; and no lapse of time, expenditure or any other thing shall be deemed to give the franchisee any vested right or interest in the continuation of the franchise granted.

16.60.310 Reserved.

16.60.320 Sale, transfer, stock transfer, lease, assignment, hypothecation or change in control of franchise.

A. A franchise shall be a privilege that is in the public trust and personal to the franchisee. A franchisee's obligations under its franchise involve personal services whose performance involves personal credit, trust, and confidence in the franchisee.

B. The franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust or change the control of the franchise or any portion of the franchise (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) to any other person or entity unless prior application is made by the franchisee to the director, and prior approval of the board is received, and after payment of the fees required by Section 16.62.025. The board's consent shall not be unreasonably withheld.

C. As used in this section, "transfer" means any transaction in which:

1. any ownership or other right, title, or interest of more than twenty-five (25) percent in a franchisee or its cable system is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part; or
2. there is any change in control of the franchisee; or
3. the rights and/or obligations held by the franchisee under the franchise are transferred, directly or indirectly, to another party; or
4. any change or substitution occurs in the managing general partners of the franchisee, where applicable; or
5. the franchisee, or its corporate parents at any level, enter into any transaction that materially increases the debt that is to be borne by the cable system directly or indirectly, in a manner that may adversely affect system rates or services; or

6. any assets or property of the franchisee used or held in connection with a cable system are subjected to any lien, mortgage, lease or security interest.

D. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation of twenty-five (25) percent or more of the ownership of a entity by any person or group of persons acting in concert, none of whom already own or control fifty (50) percent or more of such right or control, singularly or collectively.

1. As used in this section, “control” means the legal or practical ability to exert actual working control over the affairs of an entity, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

E. A franchisee shall promptly notify the director of any pending transfer, except as excluded in subsection B. The franchisee and the proposed transferee must file, at least one hundred and twenty 120 days prior to the contemplated date for County approval, a written application for the board’s consent to the transfer. Such application shall be accompanied by the fees required in Section 16.62.025(A) and shall be signed by duly authorized representative(s) and the signature(s) acknowledged by a notary.

F. A franchisee shall file with the director a certified copy of the duly executed instrument of such transfer within thirty (30) days of the effective date of such transfer. If such duly executed instrument is not filed with the director within thirty (30) days after the effective date of such transfer, then upon the expiration of such thirty (30) days, the franchise shall be subject to forfeiture and the board may, without notice, repeal the franchise by ordinance.

G. As a condition to the granting of consent to such transfer, the board may impose such additional terms and conditions upon the franchisee and upon the proposed transferee which the director recommends or the board deems to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. Consent of the board shall be conditioned upon

the consummation of the transfer on the terms and conditions set forth in the transfer documents delivered to the county, and all information provided the county under section 16.60.170(J) below, being true and correct as of the time of the consummation of the transfer. Upon receipt of such consent from the board, the franchisee may proceed to consummate the transfer. Nothing in this Division 4 shall be construed to grant to the franchisee the right to transfer the franchise or any portion of the franchise except as expressly provide in this Division 4.

H. Shareholders and/or partners of franchisee may transfer or divest themselves of any interest they may have in the franchisee. However, in the event any transfer is effected in such a way as to give control of twenty-five (25) percent or more interest in the franchisee to any persons, corporation, partnership or legal entity other than the person holding controlling interest in the franchisee on the effective date of the franchise or the effective date of last approved transfer, consent of the board shall be required as otherwise provided herein.

I. Consent to any such transfer may be refused if the board finds that the franchisee is in noncompliance with terms and conditions of the franchise and/or that the transferee is lacking in legal, technical and/or financial ability to operate the cable television system authorized by the franchise. In addition, no application for a transfer shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the franchise granting ordinance and this Division 4, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes, including renewal, unless the county, in its sole discretion, expressly waives this requirement in whole or in part.

J. Franchisee shall file with the director within thirty (30) days after the effective date of any transfer, a certified copy of the duly executed instrument(s) which officially evidences such assignment. If such duly executed instrument(s) is not filed with the director within thirty (30) days after the effective date of such transfer, or if the conditions to consent by

the board have not been met, then the director may notify the franchisee and the proposed transferee that the transfer is not deemed approved by the county. The director may then administratively determine that the transfer has no force or effect or that the franchise is forfeited and the board may repeal the franchise.

K. Application for transfer. An application for a transfer must contain all the information required by the FCC Form 394 as it existed as of January 1, 2005. In addition, the application must provide, at a minimum, the following information:

1. Identification and ownership of the proposed transferee in the same detail as if the proposed transferee were an applicant for an initial grant.

2. A copy of the complaint record as identified in Section 16.68.120(D).

3. Current financial statements showing the financial condition of the franchise as of the date of the application. The Franchisee shall also agree to submit financial statements showing the condition of the franchise as of the closing. The financial statements shall have been audited and certified by an independent certified public accountant, and shall be submitted within ninety (90) days of the closing.

4. A final accounting and report of franchise fees set forth in Chapter 16.64 within thirty (30) days of the effective date of county approval of transfer of the franchise, or of the date of close of the transfer, whichever comes first. The transferee shall be responsible for any underpayment, and shall be entitled to a credit for any overpayment.

5. A specific and complete response to any of the criteria set forth in Section 16.62.020 (Contents of application) as requested by the county.

6. Current financial statements of proposed transferee and other such information and data, including but not limited to sources of capital, as will demonstrate conclusively that transferee has all the financial resources necessary to acquire the cable television system, carry out all of the terms and conditions of the franchise, remedy any and all

defaults and violations of the provisions of this division and of the franchise granting ordinance resulting from the franchisee's past and present operations, make such other improvements and additions as may be required or proposed in the services and facilities, including but not limited to upgrading, rebuilds, and extensions of facilities and equipment.

7. A detailed description of the sources and amounts of funds to be used in the proposed transaction, indicating how the debt-equity ratio of the cable communications system will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the franchise term if the proposed transaction is approved; what financial resources would be available to the system under the control of the proposed transferee; whether the proposed transferee can meet debt-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required and why.

8. A statement of any changes in rates and charges which transferee proposes to make during the first three (3) years following approval of the transfer or assignment.

9. An express and unconditional written acceptance of the terms and conditions of the existing franchise, and the franchise as modified, as a condition to the transfer, accompanied by such guarantees as meet the requirements of Section 16.60.110(A) and (B).

10. A summary of the plans and commitments of the transferee to remedy the specific defaults and violations, if any, in the operations of the cable operator (transferor) under the existing franchise, in order to meet the requirements of section 16.60.160(M) below.

L. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer, the board may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate its system; any potential impact

of the transfer on subscriber rates or services; whether the incumbent cable operator is in compliance with its franchise granting ordinance, this Division 4, and applicable law, and, if not, whether the proposed transferee will cure any noncompliance; whether the transferee owns or controls any other cable system in the county, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the county; whether operation by the transferee or approval of the transfer would adversely affect subscribers or the public, or the county's interest under the franchise granting ordinance, this Division, and other applicable law; whether the transfer would make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost; and any other matters that the board is required or permitted to consider under applicable law.

M. In the event that the franchisee cannot cure all existing defaults and violations of the terms and conditions of the franchise granting ordinance, this Division 4, and applicable law prior to the close of the transfer, the transferee must submit a plan to cure all remaining noncompliance issues. If the plan is approved by the director, the board's consent to transfer application shall be conditional, and shall specify that if the transferee fails to complete the cure as specified in the approved plan, the consent to the application shall be voidable at the County's sole discretion, and if so voided, the application shall be deemed denied as of the date of the conditional approval.

16.60.330 Reserved.

16.60.340 Reports to director or department.

Franchisee shall file with director or department, as applicable, the following reports:

A. Each franchise fee payment, or in the case of an OVS, each payment of the fee in lieu of a franchise fee, shall be submitted with supporting detail and a statement certified by the franchisee's chief financial officer or an independent certified public accountant, reflecting the

total amount of quarterly gross revenues for the payment period and a breakdown by major revenue categories (such as basic service, cable programming service, premium service, etc.). In addition, for each service area, the report shall contain:

1. A detailed profit and loss statement showing all gross receipts and expenses derived from the franchisee's franchise operations during the reporting period.

2. The total number of service connections in operation as of the last day of the calendar quarter.

B. Franchisee shall also provide on request of the director such additional data as is reasonably necessary in the opinion of the county auditor-controller to calculate or verify the calculation of the annual payment required by Section 16.64.010.

C. An annual cable report, including but not limited to an annual status report, and a construction report, if applicable, in a form prepared by the director, to the department on or before March 1 of each year, or as determined by the department. Franchisee shall include a copy of the most recent annual Equal Employment Opportunity report filed pursuant to Section 634 of the Cable Act.

D. Upon written request of the director, the franchisee shall provide, within the time specified in the request, such additional reports, documents, data and annual proof of performance as deemed necessary by director for the administration and review of franchisee's performance under the terms and conditions of the franchise.

E. Within sixty (60) days of the effective date of the ordinance granting an initial franchise, franchisee shall begin to submit to the department a monthly construction activity report reflecting the construction status for the preceding month. The report shall include the status of permits, number of miles constructed, number of homes passed, any conditions which may affect the construction schedule, and any other information required by the director. Unless

otherwise instructed by the director, such monthly reports will be required until completion of construction activities.

F. After completion of initial construction, at such times as construction or reconstruction activities are undertaken during the term of the franchise, franchisee shall be required to submit quarterly construction reports containing the information required in subsection E. Such reports shall be due within thirty (30) days of the end of each calendar quarter.

G. As an aid to county in monitoring signal strength and quality, each franchisee shall provide county with copies of all FCC Signal Performance Reports at the same time such reports are provided to the FCC. Should the FCC no longer require signal performance reports, franchisee shall make and submit such performance tests and reports in response to written request by the county.

16.60.350 Reports to road commissioner.

The franchisee, during the term of the franchise, within sixty (60) days after the expiration of each calendar year, shall:

A. File a report with the road commissioner, which shall contain electronic street and highway maps of any convenient scale on which shall be plotted the location of the headend facilities and the entire transmission and distribution systems covered by the report as of the last day of the franchise payment period, with all parts of such systems located in county highways indicated by distinctive coloration or symbols. The submission of these maps for general reference purposes shall not relieve franchisee of the obligation to file with the road commissioner the more detailed maps required by Section 16.38.120, as incorporated by reference in this Section 16.60.185. Franchisee shall also provide on request such additional data

as is reasonably necessary in the opinion of the county auditor-controller to calculate or verify the calculation of the annual payment required by Section 16.64.020.

B. File with the road commissioner a report in duplicate showing:

1. The permit number of each permit obtained for any work being performed under the franchise for which a permit is required during the immediately preceding franchise report period;

2. The lineal length of lines and cables installed pursuant to each permit during the immediately preceding franchise report period.

16.60.360 Additional terms and conditions.

In addition to the provisions of Section 16.60.170, any time a franchisee applies for a change in territory, service area, or bonding, the board may impose such additional terms and conditions upon the franchisee and upon the grantee or assignee that the board may deem to be in the public interest. Such additional terms and conditions shall be expressed by ordinance.

16.60.370 Permit required for certain work.

Notwithstanding the granting of a franchise, the franchisee shall not be authorized to do any work under the franchise for which the issuance of a permit is required unless such a permit is issued for such work. Additional bonding, certificates of deposit, evidences of insurance or other documentation may be required by other county departments prior to the issuance of such permits. The franchisee shall not have an absolute right to the issuance of such a permit.

16.60.380 Area under franchise -- Rights of franchise.

Unless the franchise granting ordinance provides otherwise, the franchise shall authorize the exercise of the rights and privileges granted by the franchise only in such service areas, highways, public properties and public easements as are specifically authorized in the franchise

granting ordinance. Authorization to utilize additional service areas, highways, public properties and public easements may from time to time be approved by the board.

16.60.390 Reserved.

16.60.400 Fair employment practices -- Statutory provisions incorporated by reference.

Franchisee shall comply with all applicable provisions of federal, state and county law with respect to labor and employment practices.

16.60.410 Access to trenches.

A. In cases of new construction or property development where utilities are to be placed underground, franchisee(s) shall, if practical, install underground cable at the same time and in the same trenches as the public utilities (e.g., communications, electric, gas, water) are installed.

B. If franchisee is notified of the date the trenches are available and fails to install its conduit and/or cable within five (5) working days of the date the trenches are available, and the trenches are thereafter closed after the five (5) day period, the cost of new trenching is to be borne by the franchisee(s).

C. The requirements of subsections A and B shall not apply unless the property owner offers franchisee the same terms with respect to availability and cost of trenching for undergrounding as are offered to other trench users, if any.

D. In the event that a subdivider, property developer or an entity owned by, associated with or under the control of a subdivider or developer has a franchise to provide cable services to an area including its property development(s), such franchisee shall be required to make access to the utility trenches in such development(s) available to all franchisees authorized to provide cable services to an area including such development(s). Access shall be provided at

the same terms with respect to availability and cost of trenching for undergrounding as is provided to other trench users, if any.

16.60.420 Nonenforcement not a waiver.

The franchisee shall not be excused from complying with any of the requirements of the franchise granting ordinance or this Division 4 by any failure of the county on any one or more occasions to insist upon or seek compliance with any such terms or conditions.

16.60.430 Severability.

A. In the event that a court or agency or legislature of competent jurisdiction acts or declares that any provision of a franchise granting ordinance is unenforceable according to its terms, or otherwise void, such provision shall be considered a separate, distinct, and independent part of the franchise granting ordinance, and such holding shall not affect the validity and enforceability of all other provisions of the franchise granting ordinance unless their enforcement under the circumstances would be unreasonable, inequitable, or would otherwise frustrate the purposes of the franchise granting ordinance.

B. In the event that a court or agency or legislature of competent and controlling jurisdiction acts so that any material provision of a franchise granting ordinance is unenforceable according to its terms or is otherwise void, and as a result, the enforcement of the other provisions of the franchise granting ordinance would be unreasonable, inequitable, or would otherwise frustrate the purposes of the franchise granting ordinance, the franchisee and the County shall enter into good faith negotiations to agree on a modification of this franchise within sixty (60) days of written notice by either party. If the parties are unable to agree on a modification, either party, upon thirty (30) days written notice, may resort to litigation to seek any available equitable relief.

Chapter 16.62 APPLICATION FOR FRANCHISE

Chapter 16.62	APPLICATION FOR FRANCHISE	46
16.62.010	Application process.....	47
16.62.015	Proprietary information and documents.....	47
16.62.020	Contents of application.	48
16.62.025	Franchise processing fee.	54
16.62.030	Distribution of copies.....	55
16.62.040	Reserved.....	55
16.62.050	Public hearing -- Scheduling prerequisites.	55
16.62.060	Public hearing -- Notice requirements.	56
16.62.070	Posting notice -- Contents.....	56
16.62.080	Posting notice -- Time and Location.	56
16.62.090	Publication of notice.	57
16.62.100	Posting and publication costs.....	57
16.62.110	Protests and suggestions -- Filing time.	57
16.62.120	Public hearing -- Conduct.	57
16.62.130	Recommendations following hearing.	58
16.62.140	Board action on recommendations.....	58
16.62.150	License agreement.	58
16.62.170	Annual Rental Fee for Licenses.....	59
16.62.170	Authority to execute license agreements.	59

16.62.010 Application process.

Any person desiring an initial franchise for a cable communications system shall file an original application and eleven (11) copies with the director. The department shall review the application to ensure its completeness, and that all legal, technical and financial qualifications are satisfied. The director and applicant shall negotiate proposed franchise terms and conditions. Upon the completion of the department review and negotiation of the proposed terms and conditions, the department shall issue its recommendation and a proposed franchise agreement to the commission. The commission shall hold a public hearing to allow for public comment and to consider the application submitted. The commission shall issue a recommendation whether to approve or deny the application and whether to recommend the terms and conditions set forth in the proposed franchise agreement. The Board shall grant, deny or make recommendations to modify the proposed franchise agreement.

16.62.015 Proprietary information and documents.

To the extent permitted by law, proprietary information and documents may be kept confidential, if appropriately identified. In the event an applicant or a franchisee believes that the information and/or documents it must submit to the county pursuant to this Division 4 or a franchise granting ordinance should be treated confidentially by the county and is not subject to disclosure pursuant to the California Public Records Act, it must so advise the director by letter prior to or concurrent with submission of the information and/or documents, and must clearly mark each document as confidential. In the event of any dispute between the county and a franchisee regarding the confidentiality of a document, it is the franchisee's burden to demonstrate the confidentiality of the document. If it is determined by the county that such information or documents are not confidential, the applicant will be so notified and the information and/or documents will be returned to the applicant at applicant's request. If a third

party demands the release of information deemed proprietary or confidential, the county will notify the applicant so that the applicant can seek court protection.

16.62.020 Contents of application.

An application for an initial franchise for a cable communications system shall contain the following information where applicable:

A. Designation of specific area to be served by franchisee, including:

1. An electronic street map of the area to be served, including the location of proposed or existing headend site (antenna site), microwave sites, if any, and business offices;
2. The extent, if any, to which the applicant intends to overbuild existing cable operator's facilities;

B. Identification of the applicant, including:

1. Corporate or business entity organization of applicant (*e.g.*, partnership, corporation), copies of corporate or business formation papers (*e.g.*, articles of incorporation and by-laws; limited partnership agreement) together with all current filings with the secretary of state; the names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in part by applicant;
2. Basis for acquiring ownership: whether ownership or the holding was acquired at same per-share costs as other owners, whether services or other in-kind contributions are included as a basis for acquiring ownership;
3. Identification and copies of any buy-out agreements, whether written or verbal, giving other stockholders, persons or entities the right to acquire the interest of local stockholders in the future;

4. Resumé of prior business history of applicant, including the expertise of applicant in the cable communications field;

5. List of all stockholders of applicant owning or controlling five percent or more of the stock of the applicant and the percentage of stock owned or controlled by each;

6. List of officers of applicant, together with a description of education and business background of each officer;

7. A certificate of good standing from the California Secretary of State;

8. Specific information regarding whether applicant (including parent entity if applicable), any principal, manager or any other cable operator of which any principal or manager of applicant was or is a principal or manager, has ever been:

a. Found guilty of a criminal proceeding (felonies or misdemeanors) in which any of the following offenses have been charged: fraud, embezzlement, tax evasions, bribery, extortion, jury tampering, obstruction of justice (or other misconduct affecting public or judicial officers in the performance of their duties), false/misleading advertising, perjury, antitrust violations (state or federal), violations of FCC regulations, or conspiracy;

b. Found liable in a civil proceeding on causes of action for : fraud and/or misrepresentation, unfair or anticompetitive business practice, antitrust violations (state or federal) including instances in which consent decrees were entered, violations of securities laws (state or federal), false/misleading advertising, violations of FCC regulations, racketeer influences and corrupt organizations, or contraband forfeitures;

c. Subject to any penalty, criminal or civil, involving failure to comply with the requirements of a cable communications franchise;

d. Involved in instituting legal action against its franchising authorities;

e. Involved in revocation or non-renewal of any other franchises.

C. Financial information, including:

1. Current financial statement of applicant which has been audited by a certified public accountant, including, without limitation, balance sheet, profit and loss statement for at least the three most recent years, or if in existence for less than three (3) years, for such period of existence; and a statement of changes in financial position.

D. Detailed description of the financing plan for the construction and initial operation of the proposed cable communications system, and proof of financial capability.

1. Proof of financial capability shall include:

a. A showing of sources and amount of equity capital; if equity contribution is borrowed, describe collateral and terms of the loan,

b. A showing of sources and amount of debt capital, both primary and secondary,

c. Terms of financing;

2. a. Documentation that demonstrates and assures applicant's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete construction of the proposed system. Commitments conditional on the obtaining of the franchise are acceptable,

b. If applicant is a multiple system operator, evidence of the portion of the company's sources of financing which is uncommitted and will be applied to the proposed construction and operation of the system,

c. The amount of equity contribution, plus the method by which the contribution is paid (*i.e.*, cash, cash plus credit, services, etc.), including financial commitment documentation for each investor,

d. If applicant is a division or subsidiary of a multiple operator, the proposed debt instrument describing terms of payment, and/or other documentation showing funds committed to the applicant,

e. If capital is to be raised or supplied by a parent company or other entity, an annual report for the parent entity, or equivalent information if an annual report is not prepared for the parent entity,

f. Describe sources and documentation evidencing debt financing,

g. Applicant will be required to authorize release of financial information to county from financial institutions relating to information supplied by applicant in support of the application;

3. Pro forma financial statements for a minimum of five (5) years beginning with the date the franchise granting ordinance is accepted, projected annually through the year the applicant anticipates that all financing obligations and debts will have been retired. Such pro formas shall include income statements supported by realistic levels of subscriber penetration including the source of the information and basis for the projection. Sources and uses of funds, loan amortization information, anticipated capital expenditures, construction costs, depreciation schedules, and operating expenses shall be provided and the basic assumptions relied upon shall be detailed to support its projections. The information and assumptions shall include financial aspects of miles to be built and types of installation (aerial/underground), building schedule, headends, other capital investments and planned coverage; debt, debt equity ratio, debt service costs; depreciation; operating costs in detail; assumed market penetration rate; expected internal rate of return; discuss fixed and variable costs; and such other relevant information as the county deems appropriate.

E. A construction schedule, describing the type and placement of construction, detail phases of construction, and including map correlated to the phases of construction.

1. Copies of any agreement with utility companies for the use of any facilities including but not limited to poles, lines and conduits.

F. Proposed rates and charges to be charged subscribers; indicating the extent to which the applicant proposes to utilize bulk rate contracts, promotional considerations, or lock box charges and other charges if any.

G. A description of system configuration, programming and equipment, including:

1. A technical schematic of the system that will be used to provide coverage to the service area.

2. An itemized list of the electronic equipment to be used, channels to be provided, pay TV or additional services; channel lineup for basic service and other service tiers (by service tier), and type of converter; including the manufacturer, type and model numbers (aerial and underground, including drops), active electronics including power supplies and standby power systems, and passive electronics; describe the need for and proposed use of converters including an explanation of the conditions under which converters will be furnished.

3. A description of headend design and reception facilities, including make and model numbers of antennas, signal processors, modulators, demodulators, FM processors and status monitoring systems. Indicate whether signal studies or measurement programs have been undertaken in selecting the headend site(s) and microwave sites, if any.

4. A description of any other headend and/or subscriber terminal equipment that will be or may be installed for pay-per-view service, other interactive services, text display, home security, etc., and full details of immediate and long term plans including arrangements actually made.

5. A summary spectrum utilization chart.

6. The make and model number of emergency override system, and a description of how the system will work, how and from where the system will be activated.

7. A description of equipment for standby power (for headend, transportation and trunk amplifiers); length of time standby power will be provided.

8. A description of equipment to be used for programming any automated channels, including make and model numbers of the equipment.

9. An explanation of channel expansion capability in respect to both the short-term and long-term, including specific reference to the degree of flexibility available for adapting the system to increasing or changing capacity requirements.

H. A forecast of number of homes in franchise service area, number of homes to be passed (if different from number of homes in the franchise service area), and projected number of subscribers (market penetration).

I. A description of technical standards to which the system will conform, including but not be limited to:

1. Carrier to noise ratio, composite triple beat, and cross modulation specifications, and the calculations supporting these specifications associated with the transmission paths described in (a), (b) and (c) below. All supporting calculations shall be related to full loading of unmodulated television signals. Any enhancements such as HRC channelization and synchronous carriers of FM modulation shall be separately stated.

a. Worst-case satellite received signal to the most distant subscriber, including distribution system and super trunk effects.

b. Worst-case off-air-signal to most distant subscriber, including distribution and super trunk effects.

c. Worst-case most distant institutional originators to most distant subscriber, including upstream path distribution system and longest super trunk effects.

d. Amplifier Cascade. Indicate the number of amplifiers, number of miles and type of cable in the longest amplifier cascade in the proposed cable system.

J. Disclosure of whether applicant is in process of acquiring other cable systems or businesses which could impact its resources (management and financial) available to construct, upgrade, maintain and operate the franchise. Indicate any plans for future acquisition(s) within the next two years which could impact applicant's ability to furnish service.

K. If applicant is a limited partnership, a description of any plans to sell/dissolve partnership within term of the franchise.

L. A detailed description of how the applicant will provide adequate PEG access channel capacity, facilities, and/or financial support to meet the community's needs and interest.

1. To the extent feasible at time of application, a description of the facilities, equipment, training for residents, funding and staffing which franchisee will ensure are available for residents of the franchise service area.

M. Any other details, statements, information or references pertinent to the subject matter of such application which shall be required or requested by the county or by any provision of law.

16.62.025 Franchise processing fee.

A. Upon submission of an application or renewal request the applicant/franchisee shall pay to the county nonrefundable franchise processing fees covering publication costs, copying costs, and staff time as follows:

1. Initial grant of franchise or renewal of existing franchise: twenty five thousand dollars (\$25,000.00).

2. Modification of franchise requested by franchisee requiring an administrative hearing and the adoption of an amending ordinance: ten thousand dollars (\$10,000.00).

3. Consent to sale, transfer, transfer of stock, assignment or lease, or any other action requiring modification of franchise by adoption of an amending ordinance: five thousand dollars (\$5,000.00).

4. Process of a notice of cancellation and/or other change in franchisee's insurance carrier and acceptance of alternative insurance: one hundred and fifty dollars (\$150.00).

5. Process of a notice of cancellation and/or other change in the franchisee's surety bond, letter of credit, certificate of deposit cash deposits or U.S. government securities in lieu of commercial bond: five hundred dollars (\$500.00).

B. An applicant may be required to pay any additional costs incurred by county in the processing of applicant's request for franchise, renewal, modification, and consent to transfer as defined in section 16.60.170. Such costs may include the costs incurred for hiring consultants to assist in evaluating the application. Such costs shall be paid by the applicant prior to final consideration of the request by the department, the commission, or the board, as applicable.

16.62.030 Distribution of copies.

Upon receipt of an application for franchise, the director shall transmit one (1) copy to each appropriate county department.

16.62.040 Reserved.

16.62.050 Public hearing -- Scheduling prerequisites.

No application for new franchise shall be set for hearing unless it contains the information required by Section 16.62.020.

16.62.060 Public hearing -- Notice requirements.

Not less than ten (10) days before the hearing, the commission shall give notice in writing of the time, date and place of hearing to the applicant, the director, the auditor-controller, and the road commissioner. The commission shall serve such notice upon the applicant by first class mail, postage prepaid.

16.62.070 Posting notice -- Contents.

A. The Commission shall also post a notice of hearing which shall state that an application has been made for a cable communications system franchise for (specify area or areas to be served) and shall contain the following statement:

“Any person having objections to the granting of the franchise for which application is made, or wishing to suggest any other terms and conditions which should be included in such franchise, to the extent such objections or suggestions impact services to the community in the franchise service area may, at any time prior to the specified hearing date, file with the commission in writing, objections or suggestions, or both, giving the reasons for such objections or suggestions, and may appear at the time and place of the hearing to be heard relative thereto.”

B. The notice shall contain the time, date, and place of hearing.

C. The notice shall also contain the address and telephone number of the commission.

16.62.080 Posting notice – Time and Location.

Posting shall occur not less than five (5) days prior to the hearing. The commission shall post the hearing notice in a minimum of two locations within the proposed franchise service area.

16.62.090 Publication of notice.

Not less than five (5) days before the hearing, the commission shall also publish the hearing notice for three successive times in a newspaper of general circulation circulated within the proposed franchise service area.

16.62.100 Posting and publication costs.

The applicant shall reimburse the county for the costs of publication and posting of the business license commission hearing within forty-five (45) days of written notice from the county.

16.62.110 Protests and suggestions -- Filing time.

Any person interested, at any time after the filing of an application as provided in this chapter and prior to the hearing thereon, may file with the commission written comments in support or opposition to the granting of the franchise or to suggest any terms and conditions which should be included in the franchise. The commission, in considering the application, shall give consideration to all of protests and suggestions which are concern the services to the community in the franchise service area.

16.62.120 Public hearing -- Conduct.

The commission shall provide the applicant with an opportunity to present testimony and evidence in support of the application and in support of or opposition to the terms and conditions under which the franchise may be granted. The commission shall also provide opportunity for public comment concerning the application and the proposed franchise, however, the commission shall only consider those comments which address the impact of services provided to the community in the proposed franchise service area.

16.62.130 Recommendations following hearing.

A. Within thirty (30) days after the close of the hearing, and based upon the evidence received at the hearing and other matters that the commission is required to consider, the commission shall issue its recommendations regarding whether or not the application should be granted and, if granted, subject to what conditions. If the commission recommends franchise approval, it may recommend acceptance of the franchise terms and conditions as outlined in the proposed franchise agreement, or make recommendations to modify the proposed franchise terms. The commission shall send a copy of its recommendations to the applicant, the director, the auditor-controller, and the road commissioner.

B. Within thirty (30) days after receipt of the commission's recommendations, the director shall file with the board the proposed franchise agreement and the commission's recommendations.

16.62.140 Board action on recommendations.

Upon receipt of the recommendations of the commission and the proposed franchise agreement, the board may take any one of the following actions:

- A. Approve the proposed franchise agreement;
- B. Deny the proposed franchise agreement;
- C. Recommend modification of the proposed franchise terms and conditions; D. Set the matter for public hearing before itself. Such public hearing shall be held de novo as if no hearing previously had been held.

16.62.150 License agreement.

A. A license agreement is required for a cable communications system operating within a city or cities whose franchise service areas are divided by county unincorporated area(s), in order to pass through the county unincorporated area(s) as necessary to serve city

residents. The execution of a license agreement does not grant any authority to serve residents in county unincorporated area(s).

B. An applicant for a license agreement shall pay to the director a processing fee of processing fee of \$1,000.00.

C. An applicant may be required to pay any additional costs incurred by county in the processing of applicant's request for a license agreement. Such costs may include the costs incurred for hiring consultants to assist in evaluating the application for a license agreement.

16.62.170 Annual Rental Fee for Licenses

A. Each person granted a license by the county pursuant to Section 16.62.160 shall pay an annual rental fee for the privilege of using of the public rights-of-way, equal to five dollars (\$5,00) per linear foot, per conduit placed underground; and one dollar and twenty-five cents (\$1.25) per liner foot for overhead portions of cable communications facilities.

B. The annual rental fee shall be paid to the director within thirty (30) days of the end of each calendar year.

16.62.170 Authority to execute license agreements.

The director may execute license agreements for the use of county roads and county easements by cable television systems operating within a city which do not exceed fifteen (15) years in term.

Chapter 16.64 COMPENSATION TO THE COUNTY

Chapter 16.64	COMPENSATION TO THE COUNTY	60
16.64.010	Franchise fee and fee in lieu of franchise fee payments to county.	61
16.64.020	Initial construction charges.	61
16.64.030	Incorrect payments.	62
16.64.040	Reserved.	62
16.64.050	Additional charge for late payment.	62
16.64.060	Recordkeeping requirements -- Examination authorized when.	62
16.64.070	Charge for under-reported gross revenues.	63
16.64.080	Independent audit at franchisee's cost.	63

16.64.010 Franchise fee and fee in lieu of franchise fee payments to county.

A. A franchisee operating a cable system shall pay to the county a franchise fee in an amount equal to five (5) percent of gross revenues. A franchisee operating an OVS shall pay to the county a fee in lieu of a franchise fee equal to five (5) percent of gross revenues.

B. The franchise fee or the fee in lieu of franchise fee shall be paid quarterly unless otherwise specified in a franchise granting ordinance. Payment for each quarter shall be delivered to the county by check or electronic transfer not later than thirty (30) days after the end of each calendar quarter. Each payment made shall be accompanied by a report detailing how the payment was calculated.

C. In addition to the foregoing, the county reserves the right to change its fees if after a public hearing it determines good cause is found and such action is not in conflict with federal laws, FCC rules and regulations or the laws of the state of California. Without limitation, the county reserves the right to increase the franchise fee should the federal law limits on franchise fee payments be eliminated or changed.

D. Each operator of a cable communications system shall continue to fully comply with all applicable provisions of this Division 4 and its franchise granting ordinance, including without limitation payment of the franchise fee or fee in lieu of the franchise fee, even if the franchise has expired or otherwise terminates, so long as the operator is providing services in a franchise service area.

16.64.020 Initial construction charges.

In addition to the foregoing franchise fee payments, the franchisee shall pay the county department of public works, within sixty (60) days after the end of each calendar year, during the life of the franchise, an initial construction charge for all new construction during such calendar year, calculated at a rate of one hundred dollars (\$100.00) per mile or fraction of a mile, for all

lines and cables laid during the preceding franchise payment period within the authorized franchise service area.

16.64.030 Incorrect payments.

In the event any amount paid is incorrect in the judgment of the auditor-controller of county, it may order the payment of such additional sums as it may find due.

16.64.040 Reserved.

16.64.050 Additional charge for late payment.

In the event a franchisee, or a person holding a license, fails to make payments as required by this Division 4, a franchise granting ordinance, or a license agreement, on or before the dates due as provided in this Division 4, the following additional consideration shall be assessed: a sum of money equal to ten (10) percent of the amount due. For each period of late payment of any fee extending beyond thirty (30) days of the due date, in addition to the ten (10) percent late payment charge, an assessment of interest shall accrue at one (1) percent per month. The added charge(s) for late payment shall be added to, and be due and payable with, the next succeeding payment. The county shall not be obligated to notify the franchisee or the license holder of the accumulation of late payment charges

16.64.060 Recordkeeping requirements -- Examination authorized when.

A. Each franchisee shall keep and preserve, for a period of five (5) years after the date of each franchise payment period, all records necessary to determine the amount of such franchise fees or other payments due under Sections 16.64.010 and 16.64.020. A franchisee, within thirty (30) days after upon demand by county, shall make such records available for inspection and audit by county or its authorized representative, within the county of Los Angeles.

B. If records are not made available within thirty (30) days, for any reason, the county may assess punitive damages in the amount of ten thousand dollars (\$10,000) in addition to any applicable liquidated damages for failure to provide or maintain records.

C. At all reasonable times, the franchisee shall permit county, or its duly authorized representative, to examine all franchise-related property and facilities of the franchisee erected, constructed, laid, operated or maintained pursuant to the franchise, together with any appurtenant property of the franchisee, and to examine, audit, and transcribe any and all books, accounts, papers, maps and other records kept or maintained by the franchisee or under its control which relate to the operations, affairs, transactions, property or financial condition of the franchisee with respect to the franchise.

16.64.070 Charge for under-reported gross revenues.

If the report of gross revenues made by the franchisee should be found to be less than the amount of gross revenues disclosed by audit and observation, franchisee shall pay the delinquent amount and all charges required by Section 16.64.050 within thirty (30) days of the date of the a bill from the county. In the event that the additional franchise fee amount due to county exceeds two percent (2%) of the total amount which should have been paid as determined by such review or audit, and there is no reasonable basis for the failure to report or pay thereon, franchisee shall pay the cost of the audit. In addition, underreporting of gross revenues for purpose of franchise fee calculations may render the certifying officer and/or the franchisee personally liable for treble damages under the California False Claims Act., Government Code Section 12650 *et. seq.*

16.64.080 Independent audit at franchisee's cost.

The county reserves the right, for cause, to require a franchisee to obtain, at franchisee's cost, an independent audit by a certified public accountant on an annual basis, or as otherwise required by the director. For purposes of this section, "cause" shall include, without limitation, a

regular or continuing pattern of franchise fee underpayments, or fraud or misrepresentation in the franchisee's accounting practices, The certified public accountant shall be required to certify in the audit that franchisee is in compliance with the franchise granting ordinance. This right shall be in addition to the county's right to conduct audits.

Chapter 16.66 CONSTRUCTION OF FACILITIES

Chapter 16.66	CONSTRUCTION OF FACILITIES	65
16.66.010	General requirements.	66
16.66.020	New installations or replacements.	67
16.66.030	Highway work -- Terms and conditions.	68
16.66.040	Plan of service area -- Reports and maps.	68
16.66.050	Reserved.	69
16.66.060	Relocation of franchise property and appurtenances.	69
16.66.070	Removal or abandonment of facilities.	70
16.66.080	Failure to remove facilities -- county to perform work when -- Costs.	71

16.66.010 General requirements.

A. The cable communications system and all franchise property and appurtenances shall be constructed and maintained in a good workmanlike manner, in conformity with the terms and conditions of the Highway Permit Ordinance, as set forth in Division 1 of Title 16 of the County Code or any other ordinance, rule or regulation now, or as hereafter amended, adopted or prescribed by the county, as may be applicable. All work involved in the construction, operation, maintenance, repair and removal of the system shall be performed with due diligence using first-class materials.

B. The franchisee shall at all times comply with all current applicable laws, standards and regulations including but not limited to the most recently issued version of the following: National Electrical Safety Code (IEEE); California Public Utilities Commission General Order 95 and General Order 128; Title 27 of Los Angeles county Code (Electrical Code); county of Los Angeles technical standards; Recommended Practices for Measurements on Cable Television Systems (National Cable and Telecommunications Association), and FCC rules and regulations. In addition, franchisee shall meet the technical standards, conditions and obligations proposed in its franchisee application, and in the franchise granting ordinance.

1. The county may conduct periodic technical audits to determine each franchisee's compliance with this subsection B. Such audits will include spot inspections and/or testing of randomly selected area on the cable communications system. If less than ninety (90) percent of the facilities inspected and/or tested are determined to be in compliance with the provisions of subsection B, the franchisee shall reimburse the county for the cost of the technical audit, as well as the cost of all future technical audits until the franchisee demonstrates compliance. Nothing in this subsection (B)(1) is intended to relieve the franchisee of its duty to

fully comply with the provisions of subsection B and to immediately correct all safety code violations identified by a technical audit.

C. If, at any time, it is determined by the county or any other agency or authority of competent jurisdiction that any part of the cable communications system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the health or safety of any person, then franchisee shall promptly correct all such conditions.

D. The franchisee shall not construct or install any poles, conduits or other cable television system facilities on county highways until the franchisee has secured the necessary permits from the road commissioner pursuant to Division 1 of Title 16 of the County Code.

16.66.020 New installations or replacements.

A. Sixty (60) and thirty (30) days prior to the beginning of an construction, rebuild, or upgrade activity, and every thirty (30) days while engaging in such activity, a franchisee shall submit reports to the county containing the following information:

1. a general description of the construction, rebuild, or upgrade activity to be undertaken by the franchisee during the following sixty (60) days;
2. the status of necessary permits
3. the number of miles constructed and the number of homes passed as of the date of the report;
4. the number of miles to be constructed and the number of homes to be passed during the sixty (60) days following the report;
5. any conditions known to the franchisee which may affect the construction schedule; and
6. any other pertinent information that the director may require.

B. Unless otherwise specified by the director, the monthly reports required under Subsection A shall be required until completion of the construction, rebuild, or upgrade activities.

C. The provisions of Division 1 of Title 16 of the County Code shall apply to all work performed in county rights-of-way and county easements in connection with the franchise. All transmission and distribution lines and cables within county rights-of-way and county easements shall be laid and installed underground except where franchisee produces written evidence of permission to utilize existing pole systems, or where the road commissioner finds that the remoteness of the area or other conditions justify exceptions to the rule. Franchisee shall have the right to appeal to the board from rulings of the road commissioner denying permits for overhead installations in outlying areas.

16.66.030 Highway work -- Terms and conditions.

The work of constructing, laying, replacing, maintaining, repairing, abandoning or removing all franchise property and appurtenances authorized under the provisions of this Division 4 in, over, under, along or across any highway shall be done to the satisfaction of the road commissioner at the expense of the franchisee, and in accordance with the terms and conditions of Division 1 of this title. Whenever above-ground equipment is placed on public right-of-way the franchisee shall provide landscaping camouflage acceptable to the road commissioner.

16.66.040 Plan of service area -- Reports and maps.

Each Franchisee shall furnish maps indicating in detail the location of the existing construction, and planned construction, if any, within thirty (30) days of request by the director.

16.66.050 Reserved.

16.66.060 Relocation of franchise property and appurtenances.

A. The county reserves the right to change the grade, to change the width or to alter or change the location of any highway over which the franchise is granted. If any of the franchise property or appurtenances heretofore or hereafter constructed, installed or maintained by the franchisee pursuant to the franchise on, along, under, over, in, upon or across any highway are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the highway, or any work or improvement upon the highway, the franchisee shall relocate permanently or temporarily any such franchise property or appurtenances at no expense to the county, city or other public entity upon receipt of a written request from the road commissioner to do so, and shall commence such work on or before the date specified in such written request, which date shall be not less than thirty (30) days from the date of such written request. Franchisee shall thereafter diligently prosecute such work to completion; should franchisee neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, franchisee shall be responsible for and shall reimburse the county for any and all additional costs or expenses incurred by county due to or resulting from such delay in relocation of facilities. Provided, however, if such highway be subsequently constituted as a state highway, thereafter and so long as such highway remains a state highway, no such change of location shall be required for a temporary purpose.

B. The county reserves the right for itself, for all cities and other public entities which are now or may later be established, to lay, construct, repair, alter, relocate and maintain subsurface or other facilities or improvements of any type or description in a governmental but not proprietary capacity within the highways over which the franchise is granted. If the county,

city or other public entity finds that the location or relocation of such facilities or improvements conflicts with the franchise property or appurtenances laid, constructed or maintained under the franchise, whether such franchise property was laid, constructed or maintained before or after the facilities of the county or such city or other public entity were laid, the franchisee of such franchise shall at no expense to the county, city or public entity, on or before the date specified in a written request from the road commissioner, which date shall not be less than thirty (30) days after the date of such notice and request to do so, commence work to change the location either permanently or temporarily of all franchise property and appurtenances so conflicting with such improvements to a permanent or temporary location in such highways, to be approved by the road commissioner; and thereafter diligently prosecute such work to completion. Should the franchisee neglect or fail to relocate its facilities within the period specified in the any such notice, the franchisee shall be responsible for and shall reimburse the county, city or other public entity for any and all additional costs or expenses incurred by the county, city or other public entity due to or resulting from such delay in relocation of facilities. If such highway be subsequently constituted a state highway, while it remains a state highway the rights of the state of California shall be as provided in Section 680 of the California Streets and Highways Code.

16.66.070 Removal or abandonment of facilities.

A. At the expiration, revocation or termination of the franchise or of the permanent discontinuance of the use of all or a portion of its franchise property, the franchisee shall, within thirty (30) days thereafter, make written application to the road commissioner for authority either to abandon all or a portion of such franchise property in place; or to remove all or a portion of such franchise property. Such application shall describe the franchise property desired to be abandoned and its location with reference to county highways, and shall describe with reasonable accuracy the physical condition of such franchise property. The road commissioner shall

determine whether any abandonment or removal which is thereby proposed may be effected without detriment to the public interest and under what conditions such proposed abandonment or removal may be effected. The road commissioner shall then notify the franchisee of his determinations.

B. Within thirty (30) days of the date of the road commissioner's notice, the franchisee shall apply for a permit from the Department of Public Works to abandon or remove franchise property.

C. The franchisee shall, within sixty (60) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the permit.

16.66.080 Failure to remove facilities -- county to perform work when -- Costs.

A. If any facilities abandoned pursuant to Section 16.60.070 are not be abandoned in accordance with all conditions specified by the road commissioner, the road commissioner may make additional appropriate orders, including an order that the franchisee shall remove any or all such facilities. The franchisee shall comply with such additional orders.

B. In the event that the franchisee fails to comply with the terms and conditions of abandonment or removal as may be required by this Division 4, and within such time as may be prescribed by the road commissioner, then the county may remove, or cause to be removed, such facilities at the franchisee's expense. The franchisee shall pay to the county the cost of such work plus the current rate of overhead being charged by the county for reimbursable work.

C. If at the expiration, revocation or termination of the franchise, or of the permanent discontinuance of the use of all or a portion of its franchise property, the franchisee, within thirty (30) days thereafter, fails or refuses to make written application for authority to remove or abandon the franchise property, the road commissioner shall make the determination as to whether the franchise property shall be abandoned in place or removed. The road commissioner

shall then notify the franchisee of his determinations. The franchisee shall thereafter comply with the provisions of subsections B and C of Section 16.66.070.

Chapter 16.68	SERVICE, RATES AND CONSUMER PROTECTION	73
16.68.010	Establishment and furnishing of service -- Procedures and costs	75
16.68.015	Notification to residents regarding construction or maintenance	75
16.68.017	Identification required	77
16.68.018	Restoration of private and public property	77
16.68.020	Service to public facilities	77
16.68.030	Service to private nonprofit schools	77
16.68.035	Emergency override	78
16.68.040	Interconnection with other systems	78
16.68.050	Signal quality responsibility	78
16.68.060	Compliance with FCC Rules and Regulations	79
16.68.070	Exclusive county use channel	79
16.68.080	Public, educational and governmental use (PEG) channels	79
16.68.085	PEG provisions -- Not fee or payments in kind	80
16.68.090	Return capability for exclusive county use channel and PEG channels	80
16.68.095	Leased access channels	80
16.68.100	Standards for service -- Minimum requirements	81
16.68.110	Installation -- Location Description	83
16.68.120	Subscriber complaints -- Investigation, resolution and Record keeping	83
16.68.122	Special tests and reports	84
16.68.124	Subscriber terminal test requests	85
16.68.126	Periodic review of system quality	85
16.68.130	Notice and information to subscribers	85
16.68.140	Local business office requirements	87
16.68.150	Rate Regulation	88
16.68.160	Discontinuance of service for nonpayment	88
16.68.165	Restoration of service disconnected in error -- No charge to subscriber	88
16.68.170	Designation of franchisee fees and other line items on subscribers' statements -- Required notices	89
16.68.180	Requirements of notice of proposed changes in rates, charges, tiering or carriage	89
16.68.185	Termination of service -- Removal of equipment	90

16.68.190	Preference to certain subscribers prohibited.	90
16.68.192	Subscriber right to continuation of services.....	91
16.68.195	Modification of standards.	91

16.68.010 Establishment and furnishing of service -- Procedures and costs.

A. Each Franchisee shall obtain all necessary permits, certifications and authorizations as may be required in this code prior to commencement of the work. Franchisee shall notify the director when all such permits, authorizations and certifications have been obtained. Should franchisee be unable to comply with the requirements of this subsection within the time specified, the franchise granted shall become null and void and franchisee shall have no rights under the franchise; provided, however, that the county may for good cause shown by franchisee grant extensions of time to comply with this requirement.

B. A franchisee shall not begin construction of a cable communications system until the franchisee has obtained all necessary permits, certifications, bonds, and authorizations. Franchisee shall notify the director, in writing, of the date of commencement of construction and installation work within ten (10) days of the date such work commenced.

C. The franchisee shall extend and complete the cable television system throughout the designated service area with reasonable diligence, and within the time-period specified in the franchise granting ordinance. The franchisee shall be capable of providing basic service to every residence within the franchise service area; provided, however, that the director may for good cause shown by franchisee grant extensions of time to comply with this requirement.

16.68.015 Notification to residents regarding construction or maintenance

A. Prior to any construction, rebuild, or upgrade of a cable communications system, a franchisee shall establish procedures for notifying county residents in the impacted area of cable communication system construction schedules and activities. Such notices must be provided in languages reflective of those persons who work and/or reside in the impacted area. The notices shall be provided to the road commissioner for review and approval no later than twenty (20) days before commencement of construction, rebuild, or upgrade activities.

B. At a minimum the notice required in section A shall be provided by the franchisee to impacted residents in the construction area not less than forty-eight (48) hours prior to the planned construction. Additional notice shall be provided by the franchisee on the day of construction. The notice may be in the form of door hangers that indicate, at a minimum, the dates and times of construction, and the name and telephone number of a franchise contact.

C. The franchisee shall provide notice at least twenty (20) days prior to entering private property or public ways or public easements adjacent to or on such private property, and provide a second notice three (3) days prior to entering such property.

1. Should there be above-ground or underground installations (excluding aerial cable lines utilizing existing poles and cable paths) which will affect the private property, such notice shall be in writing and shall contain specific information regarding any above-ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths) which shall affect the private property.

2. To the extent practicable, above-ground equipment placed on private property shall be placed at the location requested by the property owner. A franchisee shall provide the private property owner with at least twenty (20) days' advance written notice of its plans to install such equipment, and shall make reasonable efforts to confer with such homeowners before any work is done. Should property owner or resident notify franchisee of objection to placement of any such above-ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), franchisee shall make a good-faith effort to comply with property owner/resident's preferences, if any, on location of placement of such appurtenances, consistent with sound engineering practices.

D. In addition to any other notice of proposed entry required under this Division 4, franchisee's personnel shall make a reasonable attempt to give personal notice to resident

immediately preceding entry on private property or public ways or public easements adjacent to or on such private property.

16.68.017 Identification required.

A. A franchisee, its employees, agents, contractors and subcontractors shall be properly identified as agents of franchisee prior to and during entry on private and public property. Identification shall include the name and telephone number of franchisee on all trucks and vehicles used by installation personnel.

16.68.018 Restoration of private and public property.

After performance of work, the franchisee shall restore such private and public property as nearly as possible to its condition prior to construction. Any disturbance of landscaping, fencing or other improvements upon private or public property shall be promptly repaired or restored (including replacement of such valuables as shrubbery and fencing) to the reasonable satisfaction of the property owner, in addition to the furnishing of camouflage plants on public property.

16.68.020 Service to public facilities.

Each franchisee shall, within the time specified in a written request from the county, provide and maintain, at no cost to county, at least one drop and free expanded basic service to each county owned or leased facility, law enforcement facility, fire station, public primary or secondary school, publicly funded charter school, park or other public facility now or hereafter located within the franchisee's authorized franchise service area.

16.68.030 Service to private nonprofit schools.

A. Each franchisee shall, within the time specified in a written request from the county, provide and maintain at least one (1) cable television drop and free expanded basic

service to each private, nonprofit school site within the franchisee's authorized franchise service area.

16.68.035 Emergency override.

The franchisee shall incorporate into its cable television system the capability to permit the county in times of emergency to override the audio and video portion of all channels, including where feasible the closed-captioning portion, simultaneously. In addition, if feasible, the franchisee may be required to designate a channel, which may be a PEG channel, to be used for emergency broadcasts of both audio and video. The franchisee shall cooperate with the county in the use and operation of the emergency alert override system.

16.68.040 Interconnection with other systems.

A. The county reserves the right to require the franchisee to interconnect its cable communications system with any other cable television system operating within the county of Los Angeles, within the time specified in a notice from the county.

B. For the purpose of this section, "interconnection" shall be defined as reception of or connection to those electronic signals which are delivered to the franchised cable communications system by any source for distribution via the cable communications system. Such electronic signals shall be in a format acceptable (within the state-of-the-art technology) for unattended processing into radio frequency energy for retransmission into the cable communications system.

16.68.050 Signal quality responsibility.

Franchisee shall retain full responsibility for the quality of cable communications service to all recipients of redistributed service (*i.e.*, through microwave, master antennae or satellite redistribution). Franchisee shall be presumed to have retained such responsibility together with

all obligations arising from the franchise, including but not limited to charges to the ultimate recipient for service.

16.68.060 Compliance with FCC Rules and Regulations.

A. Every franchisee shall at all times comply with the rules and regulations governing cable television system and OVS operations promulgated by the FCC. This shall particularly include adherence by the franchisee to FCC rules regarding technical and engineering specifications regarding construction and signal carriage.

B. Any modification(s) by the FCC of its rules and regulations shall, to the extent applicable, be considered as a part of the franchise as of the effective date of the amendment.

16.68.070 Exclusive county use channel.

Each franchisee shall dedicate one (1) analog channel for exclusive use by the county. In the event all or a portion of the franchise area is incorporated, such channel shall remain dedicated for exclusive county use. A franchisee may utilize the exclusive county use channel until such time as the director provides the franchisee with sixty (60) days prior written notification of intention to use the channel; provided, however, that prior to any such use by the franchisee, the franchisee shall give sixty (60) days prior written notice by certified mail to the director of such use.

16.68.080 Public, educational and governmental use (PEG) channels.

A. In addition to the exclusive county use channel as provided for in Section 16.68.070, each franchisee shall dedicate a minimum of six (6) channels for public, educational and governmental uses. Use of each type of such channels shall be in accordance with county policies and procedures. The county reserves the right to change, delete or amend such policies and procedures during the term of the franchise.

B. A franchisee may utilize the channels dedicated for PEG use pursuant to Subsection (A) for programming of the franchisee's choice until such time as the County is ready to utilize such channels for PEG use; provided, however, that prior to a franchisee's use of any such PEG channel(s), the franchisee shall give sixty (60) days written notice by certified mail to the director of such use. The director shall give the franchisee sixty (60) days prior written notice of intention to use such channel(s) for PEG use(s).

C. Underutilized PEG channels activated for PEG uses may also be utilized by a franchisee for compatible type programming subject to rules and procedures established by, and as may be modified by, the county throughout the term of the franchise.

D. A franchisee shall not be permitted to use a dedicated PEG channel if other channel capacity on the system has not been programmed.

16.68.085 PEG provisions -- Not fee or payments in kind.

Each franchise granting ordinance shall specify and each Franchisee shall agree that the provision of PEG channels and free cable drops and service, as specified in Sections 16.68.020, 16.68.030, 16.68.070 and 16.68.080, are not a franchise fee within the meaning of 47 U.S.C. Section 542(g).

16.68.090 Return capability for exclusive county use channel and PEG channels.

When required by the director, a franchisee shall provide return capability channel(s) for use in connection with the exclusive county use channel and/or PEG channel(s).

16.68.095 Leased access channels.

Each franchisee shall provide leased access channels as required by 47 U.S.C. § 532. The franchisee shall submit information regarding leased access channel rates to county when requested. Leased access channel rates shall be available for public inspection.

16.68.100 Standards for service – Minimum requirements

A. Under normal operating conditions, requests for service, repair, and maintenance must be acknowledged by a trained customer service representative within twenty-four (24) hours, or before the end of the next business day, whichever is earlier.

B. Under normal operating conditions, repairs and maintenance for outages or service interruptions must be commenced promptly and in no event later than twenty-four (24) hours after the outage or interruption becomes known to franchisee.

C. Under normal operating conditions, work to correct all other service problems must be commenced by the next business day after notification of the service problem, and must be completed within three (3) business days from the date of the initial request, unless otherwise agreed to by the subscriber.

D. A franchisee will not cancel a service or installation appointment with a customer after the close of business on the business day preceding the scheduled appointment.

E. Service must be extended upon request of a person in a franchisee's service area (i) within seven (7) days of the request, where service can be provided by activating or installing a drop; (ii) within ninety (90) days of the request where an extension of plant of one-half mile or less is required; or (iii) within one hundred eighty (180) days where an extension of plant of more than one-half mile.

F. Requests by subscribers for additional outlets, service upgrades or other connections (*e.g.*, DMX, VCR, A/B switch) separate from the initial installation shall be performed within seven (7) business days after an order has been placed.

G. Under normal operating conditions, the service standards set out in Sections 16.68.100(A)-(F) will be met at least ninety-five percent (95%) of the time, measured on a quarterly basis. The phrase "of the time" refers to the number of service requests received by the franchisee, so that if franchisee receives one hundred (100) service requests, at least ninety-five

(95) of those requests must be scheduled and/or completed within the time limits specified in Sections 16.68.100(A)-(F).

H. A franchisee shall promptly notify the department when the cable communications service to subscribers is disrupted, or when franchisee's telephone lines are out of service. In addition, the franchisee shall advise the department, by telephone and in writing, of all scheduled maintenance which will cause disruptions to service, and of any outages of more than four (4) hours duration.

I. Credit(s) shall automatically be given on a pro-rata basis to any subscriber(s) affected by interruption(s) of service for more than two (2) hours due to actions or outages under the control of the franchisee, exclusive of scheduled repairs or maintenance that franchisee has provided advance notice of to subscribers; for such interruption(s) of service not under the control of the franchisee, credit(s) shall be given on a pro-rata basis upon the request of the subscriber(s).

J. All appointments for service, installation, or disconnection will be specified by date. Each franchisee shall specify a specific time at which the work will be done, or offer a choice of time blocks which will not exceed four (4) hours in length. If at any time an installer or technician anticipates that he or she will be late for an appointment and believes a scheduled appointment time will be missed, an attempt to contact the subscriber shall be made to reschedule the appointment at a time convenient to the subscriber, if rescheduling is necessary.

K. The franchisee shall offer and fully describe to subscribers who have experienced a missed appointment (where the missed appointment was not the subscriber's fault) that the subscriber may choose between at least one of the following options:

1. Installation or service call free of charge, if the appointment was for an installation or service call for which a fee was to be charged;
2. A credit equal to twenty dollars (\$20.00).

3. An opportunity to elect remedies under California Civil Code 1722 as may be amended, if applicable.

16.68.110 Installation – Location Description.

Franchisee shall provide the director with a description of the cable communications system location, satellite location and technical parameters, and the backbone cable routing, but need not include each subscriber drop. Such documentation shall be sent to the director within sixty (60) days of initiation of subscriber service and shall be updated as necessary.

16.68.120 Subscriber complaints -- Investigation, resolution and Record keeping.

A. A franchisee shall initiate a response to subscriber complaints within one (1) business day of receipt, and resolve subscriber complaints within one (1) business day of receipt, and resolve subscriber complaints within three (3) business days after receipt of the complaint. For all subscriber complaints referred to the franchisee by the county, the franchisee shall provide the director with written notification of resolution of the complaint within three (3) business days. If a subscriber has notified franchisee in writing that a bill is in dispute, franchisee shall not terminate service pending resolution of the dispute, nor shall the account be turned over or reported to a collection agency, provided that if the subscriber only disputes a portion of the bill, the remaining balance of the bill is current. A bill shall not be considered to be in dispute solely by reason of nonpayment by subscriber.

B. Upon complaint by any subscriber regarding quality of reception or other technical issue, franchisee shall have the burden to satisfy the director that a signal is being delivered which is of sufficient strength and quality to meet standards contained in the FCC rules and regulations, as well as the county standards in effect during the term of the franchise.

C. Franchisee shall maintain a written and computer-stored complaint record containing the following information:

1. Date and time of subscriber complaint;
2. Identification of the complainant by name, address and telephone number;
3. Description of the nature of the complaint;
4. A record of when and what action was taken by franchisee to resolve the complaint.

D. The complaint record shall be kept at franchisee's local office for a period of two (2) years after receipt of any such complaint. A copy of such complaint record shall be submitted by franchisee to the director upon franchisee's application for extension of service area(s), modification, transfer or renewal of franchise. A copy of the complaint record shall also be submitted to the director within ten (10) days of the date of a written request from the director.

1. If required by the director, such complaint record shall contain a semi-annual (January 1 through June 30 and July 1 through December 31) breakdown indicating the total number of complaints received for the preceding reporting period, and shall indicate the major classifications of complaints as follows: construction, billing, customer relations/service, and miscellaneous.

E. Throughout the term of the franchise, franchisee shall maintain an outage log showing the date, approximate time and duration, type and probable cause of all headend, trunk or distribution line service failures. The log shall also include information relating to routine testing or scheduled maintenance outages. A copy of such outage log shall be submitted by franchisee to county within 10 days of the date of a written request from the director.

16.68.122 Special tests and reports.

When complaints have been made, evidence indicates an unresolved controversy or significant noncompliance with franchise standards, or when circumstances exist that, in the judgment of the director, cast doubts upon the reliability or quality of cable service, the director

may require franchisee to test, analyze and provide a written report on the performance of the cable communications system. Such report shall be delivered to the director, no later than fourteen (14) days after franchisee is notified, in writing, of the required report and shall include the following information: nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in such testing; the results of such test; and the method in which such complaints were resolved. The director may require that tests and analyses be supervised by an independent professional engineer acceptable to the county. The tests shall be forwarded to the director with a report interpreting the results of the tests and recommending actions to be taken.

16.68.124 Subscriber terminal test requests.

Franchisee shall, upon reasonable request or complaint by a subscriber and at no cost to the subscriber, perform such tests as necessary at the subscriber's terminal to establish whether a signal of requisite quality is being delivered to the subscriber's premises. The results of such test(s) shall be given to the subscriber as soon as the test is completed and evaluated, and in no event later than 10 days after the test is conducted.

16.68.126 Periodic review of system quality.

The director shall have the right to conduct periodic reviews of the performance and quality of the cable communications system during the term of the franchise. The record of subscriber complaints, the record of performance tests and other tests or surveys conducted shall be included in the review.

16.68.130 Notice and information to subscribers.

A. Each franchise shall comply with the notice requirements of California Government Code Sections 53055.1 and 53055.2. Penalties may be assessed by the County against any franchisee who fails to provide the annual notice required by Section 53055.1

Government Code, in the amount of five hundred (500) dollars for each year in which such notice is not distributed to all customers. Such penalties shall be assessed pursuant to the procedure set forth in Section 53056 of the Government Code.

B. Each franchisee shall provide each subscriber (i) at the time of installation; (ii) annually thereafter (iii) at the time any of the information contained in the previous notice changes, with written information printed in at least eight (8) point type, and if included on bills, printed on the portion of the bill that is to be retained by the subscriber, which provides:

1. A listing of all services, packages and rates available at the time, including billing options and dispute procedures, refund procedures, and company policies regarding disconnection and reconnection services and charges;

- a. If franchisee has elected to utilize line item charges for franchise fees, copyright and other fees as permitted under 47 U.S.C. Section 542(f), the listing shall disclose to the prospective subscriber the total costs associated with receiving cable services. Prior to the issuance of any such notices, a copy shall be submitted to the director for review and approval of the notices.

2. The availability of any devices required by federal, state or local law, such as, but not limited to, parental lock box device and a switching device ("A/B" switch), and any fees or charges associated with receiving the devices;

3. The address, telephone number and hours of business of franchisee's local office for service and resolution of complaints for the franchise area;

4. Identification of the department, including address and telephone number, as the referral agency, in a form of language to be provided by the director;

5. A separate, written notice containing information regarding protection of subscriber privacy rights as specified under 47 U.S.C. Section 551. Said notice to subscribers

regarding protection of privacy rights shall be issued in a separate, written notice at least once a year thereafter;

6. Other appropriate information regarding franchisee's system as required by the county.

B. Franchisee shall also provide a notice to all subscribers which identifies the department as required in subsection (A)(4) on each subscriber billing statement, in the portion to be retained by the subscriber, printed in at least eight (8) point type.

1. The director shall provide the franchisee with the language to be included in the notice. Franchisee may be subject to liquidated damages, pursuant to Section 16.60.157 of this Division 4, for failure to circulate the notice every six (6) months as required pursuant to this subsection B, in the amount of one dollar (\$1) per subscriber per month until such time as notification is made to subscribers as required.

2. Franchisee shall place the department (attn: Cable TV Franchising Division) on a mailing list for the notices required in subsections (A)(5) and (B) of this Section 16.68.130.

16.68.140 Local business office requirements.

A. Each franchisee shall maintain offices at convenient locations in its franchise area that shall be open for walk-in traffic at least during normal business hours [with some evening or weekend hours] to allow subscribers to pay bills, drop off equipment and to pick up equipment

B. A local toll-free phone number shall be available to all subscribers located within the service area twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. Trained company representatives will be available to respond to customer inquiries at least during normal business hours. After such business hours, the phone shall be answered so that customers can register complaints and report service problems

C. Telephone answering time will not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

D. Under normal operating conditions customers shall receive a busy signal less than three percent (3%) of the time.

E. Under normal operating conditions, the standards set out in Sections 16.68.140 (C) and (D) shall be met ninety (90) percent of the time, measured quarterly. The phrase “of the time” refers to the percentage of calls to the franchisee during normal operating conditions, so that if one thousand (1000) calls are received by the franchisee, nine hundred (900) of those calls must be answered within the time limits specified in Subsection (C); and fewer than thirty (30) should receive a busy signal as specified in Subsection (D).

16.68.150 Rate Regulation

The county may regulate the franchisee’s rate and charges, and order refunds of unreasonable rates charged, to the extent not prohibited by applicable law. All rates that are regulated by the county must be reasonable and, except as otherwise provided by applicable law, can only be established or changed with the prior approval of the director.

16.68.160 Discontinuance of service for nonpayment.

No franchisee shall discontinue a subscriber’s service for nonpayment unless the franchisee has fully complied with the provisions of California Government Code Section 53088.2, as may be amended.

16.68.165 Restoration of service disconnected in error -- No charge to subscriber.

In the event franchisee has improperly or inadvertently disconnected cable services to a subscriber, franchisee shall provide for restoration without charge to subscriber within two (2) business days of discovery of disconnection.

**16.68.170 Designation of franchisee fees and other line items on subscribers' statements
-- Required notices.**

Franchisee shall notify subscribers at least thirty (30) days prior to the first inclusion of franchise fees and/or other line items on their statements, as permitted in 47 U.S.C. Section 542(f). Said notice shall explain the election to use line item designations and the effects such designations shall have on the total costs associated with receiving cable services. No such notice shall be issued to subscribers until the county has reviewed and approved the notice. Any designation of franchise fees as a separate line item on the statement shall use the term "franchise fee."

16.68.180 Requirements of notice of proposed changes in rates, charges, tiering or carriage.

Whether or not the franchise is subject to rate regulation by the county, franchisee shall provide notice to subscribers and the county of changes in rates, charges, tiering or carriage as follows:

A. Each franchisee shall notify all subscribers, in writing, of any proposed changes in subscriber rates, charges, tiering or carriage at least thirty (30) days in advance of the effective date of such proposed changes. Electronic notice carried on the cable communications system and notice delivered in the newspaper will not serve to reduce the thirty (30) day advance notice requirement. In no event shall a subscriber be billed for service an increased rate or charge prior to the delivery of the notification to the subscriber.

B. Each franchisee shall notify the director, in writing, of any proposed changes in subscriber rates and charges, tiering or carriage at least forty-five (45) days in advance of the effective date of such proposed changes, including copies of the notices which will be provided to subscribers, as well as revised rate cards and/or channel lineup cards. The notification to the director shall include a list showing the rates and charges currently in effect and the proposed

changes. Only those rates and charges that are on file with the department may be charged to subscribers.

C. If it is impractical or impossible for a franchisee to provide above notifications due to conditions beyond the franchisee's control, the franchisee shall give reasonable notice to subscribers and the director.

D. In the event of a rate increase, retiering or other change(s) in service by franchisee, subscribers may downgrade or disconnect service without charge; provided, however, that charges may be imposed for failure to return converter boxes, remote controls or other equipment owned by the franchisee.

16.68.185 Termination of service -- Removal of equipment.

A. Upon termination of service to any subscriber, a franchisee shall promptly remove all its facilities and equipment from the premises of such subscriber upon subscriber's request, except as provided in subsection B. Upon such subscriber request, should the franchisee not promptly collect its equipment from the premises of the subscriber, the subscriber shall not be charged for continued services, nor for failure to return any equipment.

B. Should franchisee require the subscriber to return the equipment the subscriber shall be advised of the date by which the equipment must be returned before a charge may be imposed for failure to return the equipment.

16.68.190 Preference to certain subscribers prohibited.

Franchisee shall not grant any preference or advantage to any person or group, nor subject any person or group to prejudice or disadvantage as to rates, charges, services, service facilities, rules and regulations or in any other respect relative to the rights granted under the franchise. Nothing in this section shall prohibit the franchisee from offering limited, promotional specials, nor from offering bulk or discount billings where practical.

16.68.192 Subscriber right to continuation of services.

The franchisee may not refuse cable service to a subscriber, provided the subscriber does not violate any federal, state or local laws regarding the reception of cable services, makes payments for such services in a timely fashion to franchisee, and maintains franchisee's equipment in good working order.

16.68.195 Modification of standards.

The county reserves the right to modify, during the term of the franchise, the existing consumer service standards contained within the franchise granting ordinance, and to establish additional consumer service standards from time to time, as may be necessary to protect the subscriber, the franchisee and the county.

Chapter 16.69 RENEWAL OF FRANCHISE

Chapter 16.69	RENEWAL OF FRANCHISE.....	92
16.69.010	Franchise renewal.	93
16.69.035	Renewal of expired franchises.	93
16.69.040	Waiver of Cable Act Section 626 renewal.....	93
16.69.060	Reserved.....	93
16.69.070	Processing of application for renewal.....	93

16.69.010 Franchise renewal.

Franchise renewals shall be conducted in a manner consistent with 47 U.S.C. Section 546.

16.69.035 Renewal of expired franchises.

The county reserves the right to grant or deny any renewal of the franchise that is requested after the expiration of the initial term of the franchise and to condition any such renewal upon the franchisee's agreement to comply fully with all amendments or other modifications to the franchise as may be specified by the board or director.

16.69.040 Waiver of Cable Act Section 626 renewal.

If a franchisee does not timely initiate proceedings pursuant to and in accordance with 47 U.S.C. § 546, the franchisee shall be deemed to have waived its renewal rights under that statute.

16.69.060 Reserved.

16.69.070 Processing of application for renewal.

Subject to Section 47 U.S.C. § 546, the procedure to process an application for franchise as specified in Sections 16.62.010 through 16.62.025 of this Division 4 shall be followed for all applications for renewal.

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